Volume 8, No. 15, Pages 4706 to 5031, July 12 - July 23, 1993

FCC Record

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FEDERAL COMMUNICATIONS COMMISSION

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Citation Form: 8 FCC Rcd 1 (1993)

*Commissioner Quello designated as Chairman effective February 5, 1993.
**Commissioner Marshall resigned effective April 30, 1993.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PCI COMMUNICATIONS, INC. File No. I-T-C-93-047

Application for authority to lease and operate satellite circuits for service between the U.S. and various overseas points.

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 29, 1993; Released: July 12, 1993

By the Chief, International Facilities Division:

I. INTRODUCTION

1. The above captioned application, as supplemented, requests authority to lease circuits from Comsat to provide switched voice service between the U.S. and the points listed in the Appendix hereto and to lease IBS and Datanet service from Comsat for the provision of IBS, video and private line services between the U.S. and points listed in Comsat's Tariff FCC No. 103.[1] The Guam Telephone Authority (GTA) filed an Opposition to the subject application on January 22, 1993. PCI Communications, Inc. (PCI) filed a Reply to the Opposition on February 2, 1993.

II. DISCUSSION

2. In its Opposition, GTA asserts that the Commission should not permit PCI to expand its services while the matter of PCI's interconnection with GTA's local exchange network is under consideration by the Commission.[2] GTA notes that it requested clarification of certain aspects of the Commission's June 2, 1992 Order,[3] renewed that request by letter dated January 15, 1993 and has not yet received a response to that request other than the condition in the Commission's July 10, 1992 Order[4] that it provide PCI the same lineside service at the same rates received by PCI on May 6, 1992. GTA states that PCI presently pays $35 per month for lineside connection at business rates while its competitors pay 20.5 percent of gross revenues for trunkside connections under the Standard Terms and Conditions. GTA contends that PCI enjoys a "virtual 'free ride' with respect to the amounts it pays for interconnection." GTA asserts that PCI should not be allowed to greatly expand its services under these conditions. Therefore, the Commission should not act on the subject PCI application until it has resolved the question of the rates to be charged PCI for interconnection with GTA's local network.

3. PCI asserts that, under Commission precedent, the GTA Opposition constitutes nothing more than a strike petition. PCI states that it "strongly disputes" GTA's statement that PCI "presently enjoys a 'virtual free ride' with respect to the amount PCI pays GTA for interconnection. However, according to PCI, "there is no question that GTA would benefit enormously if left to its own devices." PCI urges the Commission to dismiss GTA's Opposition and grant PCI's application.

4. Nothing in the Commission's June 2, 1992 Memorandum Opinion and Order or its July 10, 1992 Order Extending Time in the proceeding pertain to IT&E's Petition for Emergency Relief and Expedited Declaratory Ruling suggests that the Commission intended to prohibit existing or new common carriers from providing new services from Guam during the pendency of that proceeding. To the contrary, the Commission required GTA to provide interconnection and other exchange access services to interexchange carriers in accordance with reasonable requests therefor. Therefore, we shall deny GTA's request and dismiss its Opposition.

5. Upon consideration of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity requires the lease by PCI Communications, Inc. of facilities from Comsat for the provision of switched services between the U.S. and the points listed in the Appendix hereto and the lease of IBS and Datanet facilities from Comsat for the provision of IBS, video and private line services between the U.S. and points listed in Comsat's tariff FCC No. 103.

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[1] The application was filed on December 11, 1992 and supplemented by letters dated April 27, May 13 and May 28, 1993.

[2] On June 2, 1992, the Commission released a Memorandum Opinion and Order in the matter of a Petition for Emergency Relief and Expedited Declaratory Ruling filed by IT&E Overseas, Inc. (IT&E) and joined in by PCI. *See IT&E Overseas, Inc.*, 7 FCC Rcd 4023 (Com. Car. Bur. 1992). The Commission there, *inter alia*, ordered GTA to show cause why: (1) it should not file interstate and foreign exchange access tariffs that comply with Sections 201 and 202 of the Act by January 1, 1993; and (2) if it does not file lawful interstate and foreign exchange access tariffs by January 1, 1993, why this Commission should not prescribe interstate and foreign exchange access tariffs for GTA. The Commission further ordered, *inter alia*, that GTA: (1) shall not disconnect, or otherwise impair or degrade service to any interstate or foreign interexchange common carrier; (2) shall not alter the grade of service received by any interstate or foreign interexchange common carrier in the absence of a duly acknowledged, written request therefor; (3) shall not increase any charge for any interstate or foreign exchange access service without prior FCC approval; and (4) shall provide interconnection and other exchange access services to interexchange carriers in accordance with reasonable requests therefor. On July 10, 1992, the Commission released an Order Extending Time in this proceeding in which it included a condition that GTA shall continue to provide to PCI the same lineside service, at the same rates, received by PCI on May 6, 1992. *See IT&E Overseas, Inc.* 7 FCC Rcd 4670 (Com. Car. Bur 1992).

[3] Id.

[4] Id.

III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that application File No. I-T-C-93-047 IS GRANTED, and PCI is authorized to:

a. lease from Comsat and operate 24 64-kbps satellite circuits to each point between appropriately licensed U.S. earth stations and appropriate Intelsat satellites over the Atlantic and Pacific Oceans, connecting with similar circuits between the satellite and earth stations at the points listed in the Appendix hereto furnished by PCI's correspondents;

b. lease from Comsat and operate IBS and Datanet channels of communications between appropriately licensed U.S. earth stations and appropriate Intelsat satellites over the Atlantic and Pacific Oceans, connecting with similar channels of communications between the U.S. and those countries which are or hereafter will be listed in provisions of Comsat's Tariff FCC No. 103 pertaining to the space segment components of IBS and Datanet services;

c. lease and operate facilities in the appropriately licensed U.S. earth stations;

d. lease and operate necessary domestic connecting facilities;

e. use the facilities in a, c and d above to provide switched services between the U.S. and the points listed in the Appendix hereto; and

f. use the facilities in b, c, and d, above to provide IBS, video and private line services between the U.S. and those countries which are or hereafter will be listed in provisions of Comsat's Tariff FCC No. 103 pertaining to the space segment components of IBS and Datanet services.[5]

7. IT IS FURTHER ORDERED that the Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

8. IT IS FURTHER ORDERED that no material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between PCI and its correspondents in any of the points listed in the Appendix hereto, and copies of the agreements, including the applicable accounting rate, shall be filed with the Commission within 30 days of their execution and shall otherwise comply with the filing requirement contained in §43.51 of the Commission's Rules, 47 C.F.R. §43.51.

9. IT IS FURTHER ORDERED that our authorization of applicant to provide private lines is limited to the provision of such private lines only between the U.S. and those point listed in Comsat's Tariff FCC No. 103 -- that is, private lines which originate in the U.S. and terminate in one of the points listed in Comsat's Tariff FCC No. 103 or which originate in one of the points listed in Comsat's Tariff FCC No. 103 and terminate in the U.S. In addition, applicant may not -- and applicant's tariff must state that applicant's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic communications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the foreign administration affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending*.

10. IT IS FURTHER ORDERED that neither PCI nor any persons or companies directly or indirectly controlling or controlled by PCI, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which PCI or any persons or companies controlling or controlled by PCI are parties.

11. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

12. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

13. IT IS FURTHER ORDERED that:

a. PCI shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 U.S.C. § 203 and the *Interexchange Order*;[6] and

b. the services obtained by PCI shall be made generally available to similarly situated customers at the some terms, conditions and rates.

14. IT IS FURTHER ORDERED that this Order may be subject to future modification pursuant to the outcome of the *Phase II Third Further Notice* and any related proceedings.

15. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. Section 63.15(b).

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[5] We note that should the applicant obtain any interest in facilities beyond the authorized international points for the purpose of providing common carrier services, including private line service, between the U.S. and other international points, such action would constitute an extension of line under Section 214 of the Act. Therefore, under the provisions of the Commission's *International Competitive Carrier Policies*, 102 FCC 2d 812 (1985), *recon. denied*, 60 R.R. 2d 1435 (1986), it would be necessary for applicant to file additional applications for a certificate of public convenience and necessity under Section 214 to begin service to each additional country and for authority to acquire any facilities needed to provide service to such additional points.

[6] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991) (*Interexchange Order*).

16. IT IS FURTHER ORDERED that GTA's Opposition IS HEREBY DISMISSED.

17. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX

(A) Atlantic Ocean Area Regions

Latin America	Europe	Middle/Near East and Africa and Other Europe
Antigua	Austria	Algeria
Argentina	Belgium	Angola
Aruba	Cyprus	Ascension Island
Bahamas	Denmark	Azores
Barbados	Finland	Bahrain
Belize	France	Benin
Bermuda	Germany	Botswana
Bolivia	Greece	Bulgaria
Brazil	Iceland	Burkina Faso
Cayman Islands	Ireland	Burma
Chile	Italy	Cameroon
Colombia	Liechtenstein	Canary Islands
Costa Rica	Luxembourg	Cape Verde
Curacao	Malta	Central African Republic
Dominican Republic	Monaco	Chad
Ecuador	Netherlands	Congo
El Salvador	Norway	Commonwealth of Independent States (each Republic formerly member of U.S.S.R.)
French Guiana	Portugal	Czechoslovakia
Grenada	San Marino	Diego Garcia
Guantanamo Bay	Spain	Egypt
Guatamala	Sweden	Estonia
Guyana	Switzerland	Ethiopia
Haiti	Turkey	Gabon
Honduras	United Kingdom	Gambia
Jamaica	Vatican	Ghana
Martinique	Yugoslavia	Gibraltar
Netherlands Antilles		Guinea
Nicaragua		Hungary
Panama		Iran
Paraguay		Iraq
Peru		Israel
St. Lucia		Ivory Coast
St. Vincent		Jordan
Surinam		Kenya
Trinidad & Tobago		Kuwait
Turks & Caicos Isles		Latvia
Uruguay		Lebanon
Venezuela		Lesotho
		Liberia
		Libya

Middle/Near East and
Africa and Other Europe (cont.)

Lithuania
Madagascar
Malagasy Republic
Malawi
Mali
Mauritania
Morocco
Mozambique
Niger
Nigeria
Oman
Pakistan
Poland
Qatar
Romania
Saudi Arabia
Senegal
Sierra Leone
South Africa
Sri Lanka
Sudan
Swaziland
Syria
Tanzania
Togo
Tunisia
Uganda
United Arab Emirates
Yemen
Zaire
Zambia
Zimbabwe

(B) Pacific Ocean Region

American Samoa
Australia
Brunei
China (Peoples Republic)
Christmas Is.
Cook Island
Ebeye
Fiji Islands
French Polynesia
Hong Kong
India
Japan
Kiribati
Korea
Kosrae
Majuro
Malaysia
Mariana Is.
Nauru
New Caledonia
New Guinea
New Zealand
Palau
Papua New Guinea
Philippines
Ponape
Saipan
Singapore
Solomon Is.
Sri Lanka
Taiwan
Thailand
Tonga
Truk
Vanuatu
Western Samoa
Yap

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-235

In the Matter of

Replacement of Part 90 by
Part 88 to Revise the Private
Land Mobile Radio Services
and Modify the Policies
Governing Them

ORDER EXTENDING REPLY COMMENT PERIOD

Adopted: June 30, 1993; Released: July 2, 1993

Reply Comment Date: July 30, 1993

By the Chief, Land Mobile & Microwave Division, Private Radio Bureau:

1. On November 6, 1992, the Commission released a *Notice of Proposed Rule Making*, 7 FCC Rcd 8105 (1992), (*Notice*), in this proceeding. The specified deadlines for comments and reply comments were February 26, 1993 and April 14, 1993, respectively. On February 8, 1993, the Chief, Private Radio Bureau, extended the comment and reply comment deadlines to May 28, 1993 and July 14, 1993, respectively, in response to requests from the Public Safety Communications Council, the Land Mobile Communications Council (LMCC), and PowerSpectrum, Inc. (8 FCC Rcd 1501 (1993)). On June 29, 1993, LMMC submitted a *Motion for Extension of Time* to extend the reply comment period to July 30, 1993.

2. LMCC based its request on the number and complexity of the comments filed in response to the *Notice* and on the need for additional time to review and analyze the voluminous record in this proceeding. We believe the public interest would be served by providing adequate time for interested parties to read and respond to comments filed in response to the *Notice* so that the Commission has at its disposal the fullest possible record on which to make decisions on all the issues involved in this proceeding.

3. Accordingly, IT IS ORDERED, based on the authority granted in Section 0.331 of the Commission's Rules and Regulations, 47 C.F.R. § 0.331, that the petition of LMCC IS GRANTED, and, that the deadline for filing reply comments in the subject *Notice of Proposed Rule Making* is extended to July 30, 1993.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile & Microwave Division
Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166

In the Matter of

Investigation of Special Access Tariffs of Local Exchange Carriers	Phase II Part 1 and Phase III, Part 1

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 1993; Released: July 12, 1993

Report Date: August 12, 1993
Opposition Report Date: August 27, 1993
Refund or Reply Report Date: September 13, 1993

By the Commission:

1. In this Order we address: (1) the issue remanded to us by the 1987 decision of the United States Court of Appeals for the District of Columbia Circuit in *Western Union;*[1] (2) a petition filed by the Western Union Telegraph Company seeking further reconsideration of our March 1985 determination that the duration of the Other Common Carrier (OCC) Rate Equalization Plan would not be tied to completion of the special access tariff investigation;[2] and (3) various petitions for reconsideration or review of decisions by the Common Carrier Bureau in March 1986 to extend the OCC Rate Equalization Plan temporarily in certain states and to terminate the rate level portion of the investigation in other states.[3]

I. BACKGROUND

2. "Special access" is the name given by this Commission to a variety of services and facilities which constitute the local portion of certain interstate telecommunications lines. Special access services and facilities are provided by local exchange carriers (LECs) to end users and interexchange carriers (IXCs). Unlike switched access, special access primarily involves the provisioning of so-called "private lines," that is, facilities or network transmission capacity dedicated to the use of an individual customer.

3. Prior to the advent of effective special access tariffs, local private line services were provisioned via a number of mechanisms, including American Telephone and Telegraph Company's (AT&T's) interstate private line tariffs, individual carrier-to-carrier contracts, and the Docket 20099 Settlement Agreement.[4] Each of these mechanisms had its own rates and rate structure, even though the services and facilities provided essentially were identical. In implementing the access charges plan,[5] this Commission sought to replace these provisioning mechanisms with a single, cost-based and non-discriminatory rate structure.[6]

A. Special Access Tariffs

4. LECs filed their original access tariffs, including special access, in October 1983. Substantially revised special access tariffs became effective for the first time in April 1985. During the period between these two events,[7] the Commission twice rejected special access tariff filings on an industry-wide basis due to flaws in the proposed rate structures and deficiencies in the LECs' cost support materials.[8] Following further review, the third round of special access tariffs were allowed to take effect, subject to the investigation in this docket.[9]

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[1] Western Union Telegraph Company v. FCC, 815 F.2d 1495 (D.C. Cir. 1987) (*Western Union*).

[2] Western Union Telegraph Company (Western Union) Petition for Reconsideration, filed Feb. 26, 1986.

[3] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 3436, released Mar. 27, 1986 (Com. Car. Bur.) (*Extension Order*).

[4] The Docket 20099 Settlement Agreement embodied the negotiated terms and conditions pursuant to which AT&T and the former Bell Operating Companies (BOCs) made local private line distribution facilities available to OCCs from 1975 through 1985. The Agreement is discussed in detail *infra*, paras. 5 and 6.

[5] MTS and WATS Market Structure, 93 FCC 2d 241 (1983) (*Access Order*), *recon.*, 97 FCC 2d 682, *aff'd in principal part*, National Ass'n of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985) (*NARUC v. FCC*).

[6] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 84-524, released Nov. 9, 1984 (*November 9 Order*).

[7] Following our review of the October 1983 access tariff proposals, we initiated a comprehensive investigation of all access and divestiture related tariffs, including the special access portions of such tariffs, which continued for the next 18 months. *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, FCC 83-470, released Oct. 19, 1983, *recon. denied*, FCC 83-568, released Dec. 29, 1983 (Docket 83-1145).

[8] The first set of LEC special access tariffs filed with this Commission were rejected in February of 1984. Investigation of Access and Divestiture Related Tariffs, 97 FCC 2d 1082 (1984) (*ECA Tariff Order*); Investigation of Access and Divestiture of Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 2802, released Mar. 7, 1984 (*Non-ECA Tariff Order*). The second set of tariff filings was rejected in November of 1984. *November 9 Order, supra*, note 6.

[9] Our review of these tariffs focused particularly upon rate structure and cost issues raised by the filings. *See generally* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-70, released Feb. 17, 1985 (*Special Access Rate Structure Order*). In March 1985, this Commission terminated the omnibus Docket No. 83-1145 investigation upon the effective date of special access tariffs. Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-100, released Mar. 8, 1985 (*Special Access Cost Order*). The Common Carrier Bureau subsequently supplemented the aforementioned Orders with a more particularized designation of issues. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166 (Docket 85-166), Mimeo No. 4726, released May 24, 1985 (*Special Access Designation Order*).

B. OCC Rate Equalization Plan

5. Prior to the effective date of special access tariffs, OCCs generally secured local private line facilities from LECs pursuant to the negotiated rates, terms, and conditions embodied in the Docket 20099 Settlement Agreement.[10] These rates, which originally became effective in 1975, remained in effect for the next 10 years due to AT&T's and the BOCs' failure to propose reasonable, cost-based revisions during this period.[11] Evidence in the Docket 83-1145 record strongly demonstrated that these rates were unreasonably low, well below the level of the special access rates based on costs then under review.[12] This Commission noted that continuing the negotiated rates would, *inter alia*, place an excessive burden on other consumers, and the Commission concluded that the Settlement Agreement was unjust, unreasonable, unduly preferential, and no longer in the public interest. We thus confronted an issue that had been lingering throughout the access charge proceeding: how to make a reasonable and lawful transition from the Settlement Agreement to special access rates consistent with the access charge plan.[13]

6. In November 1984, the Commission abrogated the Settlement Agreement in relevant part and directed the BOCs to increase rates for facilities that had been subject to the Settlement Agreement by 20 percent until such time as special access tariffs became effective.[14] However, the Commission was concerned that a sudden shift from Settlement Agreement rates to cost-based special access rates would seriously compromise the OCCs' ability to provide services to many customers, thereby generating immediate and substantial negative effects in the telecommunications marketplace. Such a result could threaten the goal of a competitive market for interstate telecommunications services.[15] The Commission, therefore, adopted a plan to gradually equalize the Settlement Agreement rates and full special access rates. Although the Commission recognized that any transition plan would generate a disparity of its own -- a gap between the rates paid by the OCCs and those paid by other customers, such as AT&T -- it concluded that, on balance, the short-and long-term benefits of a transition to mitigate rate shock were in the public interest.[16]

7. The *November 9 Order*, which rejected the second set of special access tariffs and abrogated the Settlement Agreement, also invited comment on a transition plan, which we are describing as the OCC Rate Equalization Plan in this Order. Under this Plan, rates for circuits in place and subject to the Docket 20099 Settlement Agreement as of November 8, 1984, would be set at 50 percent of the standard tariffed rate for such circuits during the first six months after the effective date of the tariffs, at 75 percent of the tariffed rate for the next six months, and at the full rate thereafter. New circuits would be subject to the full tariff rates immediately. The Commission adopted that proposed plan in the March 1985 *Special Access Cost Order*. The Commission also determined that BOCs would not be permitted to increase non-discounted rates in order to recover any shortfall resulting from the OCC Rate Equalization Plan in the absence of a showing that the effect of the discount would lower a carrier's overall earnings to an unreasonable level.[17]

8. At the time the OCC Rate Equalization Plan was adopted, the Commission rejected suggestions that the Commission tie the duration of that Plan to the completion of any investigation of LEC special access tariffs.[18] It later reaffirmed this determination in an Order addressing a petition for modification of the OCC Rate Equalization Plan.[19] In each instance, it reasoned that the primary purpose of that plan was to provide a transition from Settlement Agreement rates to special access rates.[20] To the extent that questions remained about the lawfulness of the special access rate levels, the Commission noted, customers would be protected by an accounting order and the availability of refunds, if warranted.

9. The annual industry-wide recalculations of switched and special access rates required by Commission rules were filed by the LECs in July 1985. Based upon its review most of these rates were allowed to take effect on October 1, 1985 but were included in this investigation. In the course of the investigation, the Bureau subsequently requested information from the LECs regarding actual special access earnings both for the April through September 1985 period during which the first set of rates was in effect and for the first two months under the revised, October 1, 1985 rates.

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[10] In 1974, to promote entry by competing carriers into the interstate private line market, this Commission ordered AT&T to furnish OCCs with the interconnection facilities they required to provide their authorized interstate and international telecommunications services. Bell System Tariff Offerings, 46 FCC 2d 413 (1974), *aff'd*, Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (3d Cir.), *cert. denied*, 422 U.S. 1026 (1975). The tariffs AT&T filed in response to our Order were set for investigation in Docket No. 20099. AT&T Co., 47 FCC 2d 660 (1974). After five months of negotiations between AT&T and the OCCs, conducted "under the aegis" of this Commission, AT&T and certain other carriers arrived at a settlement of the investigation, which we accepted by the Commission. AT&T Co., 52 FCC 2d 727, 732-33 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C. Cir. 1976). We found that acceptance was in the public interest because the agreement would further our policies of open entry and competition in the market for long distance services. AT&T Co., 52 FCC 2d at 732.

[11] AT&T filed tariffs designed to increase the Docket 20099 Settlement Agreement rates on two occasions prior to the LECs' October 1983 special access tariff filings. AT&T's first attempt occurred in the context of an across-the board increase of its entire rate schedule, including its Docket 20099 Settlement Agreement rates; AT&T offered as justification a showing that its total company earnings were deficient. The United States Court of Appeals for the District of Columbia Circuit later held that such a showing did not satisfy the provisions in the Settlement Agreement for increasing rates. MCI Telecommunications Corp. v. FCC, 665 F.2d 1300 (D.C. Cir. 1981), *vacating* AT&T Co., 78 FCC 2d 661 (1980). AT&T's second attempt to increase the rates was rejected by this Commission as unsupported. AT&T Co., 92 FCC 2d 896 (1982).

[12] *November 9 Order* at para. 85.

[13] *See e.g., Access Order*, 93 FCC 2d at 309-10 (Commission concludes that Settlement Agreement would be terminated when special access tariffs became effective).

[14] *November 9 Order* at paras. 92-95, 98-104.

[15] *Id.* at para. 104.

[16] *Special Access Cost Order* at paras. 45-46.

[17] *Id.* at para. 42, 44.

[18] *Id.* at para. 37.

[19] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 86-54, released Jan. 24, 1986 (*Reconsideration Order*).

[20] *See Special Access Cost Order* at para. 44; *Reconsideration Order* at paras. 48-49.

The earnings reported during the April through September period were below the authorized rate of return in almost all cases. For some BOCs, however, reported earnings under the October 1 rates were well above the authorized level.

10. Based upon these reported earnings results, the Common Carrier Bureau extended the OCC Rate Equalization Plan in 15 BOC study areas for a maximum period of two months in its March 27, 1986 *Extension Order*. The Bureau found that BOC earnings on special access services in these 15 study areas likely would exceed authorized levels upon the occurrence of the last scheduled step in the Rate Equalization Plan, on April 1, 1986. The Bureau ordered the BOCs in question either to justify their rates or lower them.[21] That Bureau Order terminated the rate level portion of the Docket 85-166 special access investigation in other study areas where the record demonstrated that BOC rates were not likely to be unreasonable.[22]

C. The *Western Union Remand Order*

11. In April 1987, the U.S. Court of Appeals for the District of Columbia released its Order reviewing the Commission's action. The Court upheld our decision to abrogate the Settlement Agreement and affirmed our authority to prescribe transitional rate structures to avert rate shock. However, the Court reversed the Commission treatment of the six months' notice and cost support provisions of the Settlement Agreement. The Court concluded that the Commission had failed to justify abrogating these provisions. Therefore, although the finding that the Settlement Agreement rates were unlawful was valid, the remainder of the Agreement remained in effect. The Court concluded, therefore, that the increased rates for facilities subject to the Settlement Agreement could not properly take effect until six months after revised rates were filed on December 3, 1984, or in other words, before June 3, 1985. Finding that the remedy in the case was "an order of appropriate refunds from those who charged the special access rates to those who paid them," the Court remanded the case to this Commission to calculate the appropriate monetary adjustment.[23] The Court also stated that this Commission "is free to reconsider what transitional rates would have been appropriate" in light of the Court's opinion.[24]

II. RECONSIDERATION OF OCC RATE EQUALIZATION PLAN

A. Proceedings on Remand

12. The Common Carrier Bureau subsequently released an Order establishing procedures for obtaining information necessary to comply with the *Western Union* mandate.[25] The Bureau noted that the Court's decision requires a refund of charges above the rates established in the Docket 20099 Settlement Agreement for circuits in place as of November 8, 1984, for the period from November 13, 1984, through June 3, 1985.[26] In addition, the Bureau stated, the decision requires refunds for OCC special access circuits that were added during the period from November 13, 1984, through June 3, 1985, to the extent that the rates charged for such circuits exceeded the Settlement Agreement rates that would have applied to those circuits. Accordingly, the Bureau directed the BOCs to calculate the appropriate refund amounts for their OCC customers, and to file that information with this Commission.[27]

13. The *January 15 Order* also invited the BOCs and other commenters to discuss any issues raised by the *Western Union* remand, including: whether the remand should have an effect upon the National Exchange Carrier Association (NECA) traffic sensitive pool; whether all OCCs, or only parties to the Settlement Agreement are entitled to the mandated refunds; whether, in light of the Court's opinion, the OCC Rate Equalization Plan should be modified to advance the purposes for which the Plan was adopted; and whether the Court's remand has any impact on the various pending petitions for reconsideration and applications for review in Docket 85-166 relating to the implementation of the OCC Rate Equalization Plan.[28]

B. Summary of Pleadings

1. BOC Submissions

14. On June 1, 1988, the BOCs responded to the Bureau's *January 15 Order* with computations of refunds due the OCCs for the period November 13, 1984, to June 3, 1985, and comments on the various related issues. In addition, Bell Communications Research (Bellcore) submitted a compilation of the record data for the seven regional BOCs, to provide the Commission with an "industry-wide perspective of the impact of the Court of Appeals remand.[29] Bellcore states that for the pre-June 3, 1985, period, the BOCs would owe a total of $29.4 million to all OCCs, including non-signatories, and a total of $22 million if the refund were limited to signatories only.[30]

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[21] *Extension Order* at paras. 15-19. That Order also directed US West to show cause why certain amounts received during the April - September 1985 period should not be refunded. *Id.* at paras. 20-21. The Commission subsequently concluded that refunds were not warranted. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Parts 1 and 2, 5 FCC Rcd 1717 (1990).

[22] *Id.* at paras. 22-23.

[23] *Western Union*, 815 F.2d at 1504.

[24] *Id.* at 1505.

[25] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase III, Part 1, Order Inviting Comments and Requesting Data, 3 FCC Rcd 176 (1988) (*January 15 Order*).

[26] The Bureau added that this includes the 20 percent increase over the Settlement Agreement rates from November 13, 1984, through April 1, 1985, and the difference between the Settlement Agreement rates and 50 percent of the initial special access tariff rates for the period April 1, 1985, through June 3, 1985. *January 15 Order*, 3 FCC Rcd at 176-77.

[27] *Id.* at 177. The Bureau also directed the BOCs to provide the data used to calculate those refund amounts.

[28] *Id.*

[29] Bellcore Letter of Chief, Tariff Division, filed June 1, 1988.

[30] Bellcore further states that the potential NECA refund for all OCCs would be $10.7 million, and for signatories only, $7.9 million.

15. Bellcore and all of the BOCs contend, however, that a refund obligation also runs from the OCCs to the BOCs. Citing principles of equity and contract law, Bellcore and the BOCs argue that the OCCs received a windfall after June 3, 1985, because the OCCs did not pay full cost-based, non-transition rates.[31] Pursuant to the Court's invitation to modify the transition plan, they continue, this Commission should now hold that the OCCs owe a refund of that windfall to the BOCs. Bellcore indicates that assessing the full, non-transition rates would result in a debt from the OCCs to the BOCs of $103.7 million and $80.8 million, for all OCCs and for signatory OCCs, respectively. Thus, the net result of the Settlement Agreement refunds and the recalculation of full cost rates after June 3, 1985 would be a debt from the OCCs to the BOCs of $74.3 million and $58.8 million, for all OCCs and for signatories, respectively.

16. Nevertheless, Bellcore and all of the BOCs (except Ameritech) offer to forgive this "debt" in a "revenue neutral" solution.[32] Bellcore submits that acceptance of this revenue neutral proposal would be equivalent to providing OCCs with a nationwide average discount of 25 percent for the June 3, 1985, through April 1, 1986, period.[33] According to Bellcore, this is the same amount of support produced by the original transition plan.[34] Further, the BOCs argue, a revenue neutral solution would satisfy the goals of the original transition plan. They describe those goals as ensuring that competition in interstate private line services was not impaired, and easing rate shock.[35]

17. The BOCs present two legal arguments. The first, advanced by NYNEX, Bell Atlantic, Pacific Bell, Southwestern Bell, and BellSouth, is an "equitable level of support theory."[36] According to this theory, the BOCs maintain that, in retrospect, the transition plan was successful because the OCCs did in fact "survive" the multistep increase to full cost rates. In light of the success of the transition plan, these BOCs argue that it would be inequitable for the OCCs to receive even more benefits than were in fact necessary. Consequently, they conclude, the OCCs are not entitled to some fixed level of relief, and OCCs should receive no more than was actually sufficient to fulfill the purposes of the transition plan. This equitable position is reinforced, the BOCs add, by the fact that this Commission has never held the full cost special access rates to be unlawful. Now that rate shock is not a concern, the BOCs maintain, there is no reason why the OCCs should not pay these apparently lawful rates.

18. Ameritech and US West advance a variant of the BOCs' basic position, which can be described as a "contract theory." Ameritech maintains that Western Union, as the petitioner in the *Western Union* cases, had a basic litigation choice: Western Union could challenge the transition plan on the six-month notice issue, hoping to gain a flat six-month delay of any increase over Settlement Agreement rates, but losing thereby the multistep benefit of the transition; or it could accept the transitional plan, foregoing the flat six-month delay, but gaining the transition's multistep benefit.[37] According to Ameritech, the latter option would be more advantageous if the Court also found that the filing which triggered the running of the six-month period occurred at some time later than the December 3, 1984, tariff filing.[38] Ameritech maintains that since Western Union chose the latter option and won (on the notice issue but not on the filing date issue), it cannot now have things both ways. Ameritech further notes that both parties to the Settlement Agreement understood it to mean that the BOCs had a contractual right to begin charging the OCCs full tariff rates six months after cost-supported rates were filed.[39] Accordingly, Ameritech concludes, the OCCs owe Ameritech for the net amount, *i.e.*, $10.8 million.[40] Ameritech does not offer to forgive that debt.

19. According to US West, the Court's reversal in *Western Union* of this Commission's abrogation of the Settlement Agreement means that the transition plan is cancelled and the Agreement, as a private contract, is resurrected and now controls the rights and duties of the parties.[41] The Agreement provides, according to US West, that six months after the BOCs file new rates with Section 61.38 cost support, the BOCs have an absolute contractual right to begin charging full rates. Therefore, US West concludes, the OCCs owe it for full cost rates from June 3, 1985, forward, resulting in a net debt from the OCCs to the BOCs.[42] US West, however, offers to accept a revenue

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[31] *See* BellSouth Comments at 5; Ameritech Comments at 3-4; Southwestern Bell Comments at 8-10; Pacific Bell Comments at 9; US West Comments at 3; NYNEX Comments at 14-15; Bell Atlantic Comments at 3-4.

[32] *See* BellSouth Comments at 5; Ameritech Comments at 3-4; Southwestern Bell Comments at 8-10; Pacific Bell Comments at 9; US West Comments at 3; NYNEX Comments at 14-15; Bell Atlantic Comments at 3-4.

[33] Bellcore computed the 25 percent figure by dividing the alleged net OCC refund liability by the total (undiscounted) special access revenues. *See* Bellcore Letter, Attachment 5(a).

[34] *See id.* at 2.

[35] *See, e.g.*, Pacific Comments at 9; Bell Atlantic Comments at 3. Conversely, NYNEX contends, a refund to the OCCs would only impose additional financial burdens on the BOCs and their shareholders "above and beyond that required to bear." NYNEX Comments at 4, 10-11.

[36] *See* NYNEX Comments at 13-16; Bell Atlantic Comments at 3; Pacific Bell Comments at 7-10; Southwestern Bell Comments at 8-10; BellSouth Comments at 5-8.

[37] *See* Ameritech Comments at 3-5.

[38] In fact, Ameritech notes, at the February 17, 1987, oral argument, the OCCs claimed that cost-based special access tariffs still had not been filed, and thus, the six-month notice period had not started. *Id.* at 4-5 n.6.

[39] *Id.* at 8 (citing Settlement Agreement, 52, FCC 2d 738, 740 at para. 3(b) (1975) ("the reduced OCC tariff rates will apply until the effective date of the new OCC tariffs ...[which] will not become effective until six months from the date of filing..."). Ameritech also cites *Bell Telephone Co. of Pennsylvania*, for the proposition that a BOC can enforce its contract results in the recovery of additional revenues from the OCCs.

[40] It is unclear whether this amount includes all OCCs, or only signatories to the Agreement.

[41] *See* US West Comments at 2-4. US West argues that OCCs who signed the Settlement Agreement expressly contracted away their right to an additional transition period such as "the Commission-prescribed [Transition Plan]." *Id.* at 4. According to US West, because the transition plan was reinstated by the "deliberate action of some OCCs," the plan was automatically terminated -- to the extent it is inconsistent with the Settlement Agreement. US West insists that to rule otherwise would be to allow signatory OCCs to "rely simultaneously on the continuation and the termination of the Settlement Agreement." *Id.*

[42] US West notes that had the OCCs not sought reinstatement of the Settlement Agreement, the OCCs would not owe the BOCs money. US West asserts that "under these circumstances,

neutral solution identical to that recommended by the BOCs who adhere to the equitable level of support theory.[43]

20. All BOCs that address the issue contend that only signatories to the Settlement Agreement should receive refunds. According to several BOCs, non-signatories are not entitled to refunds because the six-month notice provision is in the Settlement Agreement contract but not in the associated tariffs.[44] Bell Atlantic asserts that since full cost-based rates have never been found to be unjust or unreasonable, there is no reason why the non-signatories should not have to pay tariffed charges.[45] Moreover, it notes, the *Western Union* opinion gave no hint that non-signatories should be included in the refund. Some BOCs maintain that their positions are supported by analogous holdings in previous D.C. Circuit decisions concerning the Docket 20099 Settlement Agreement and the ENFIA tariffs.[46]

21. Additionally, several BOCs argue that NECA's traffic sensitive pool, which included costs and revenues special access for some BOC study areas, should not be reopened because NECA has adopted a 24-month limitation on pooling adjustments and the small benefit of any adjustment in pool distributions would be outweighed by administrative costs incurred to effect the adjustments.[47]

22. Finally, Southwestern Bell argues that a revenue neutral solution would have no effect on the outcome of other pending petitions and applications for review in the special access proceeding.[48] US West suggests that there is no "material relationship" between its position in its response to the Common Carrier Bureau's Order to show cause and the remand proceeding.[49] NYNEX submits that Western Union's petition to postpone termination of the transition plan until conclusion of the special access investigation is moot with respect to NYNEX. NYNEX notes that the Bureau concluded its investigation into the special access rate levels of most LECs (including NYNEX) in the March 27, 1986, *Extension Order -- before* termination of the transition plan.[50] As to Western Union's application for review of the *Extension Order*, NYNEX asserts that the Court remand should have no effect on the Bureau's decision to terminate the rate level investigation with respect to NYNEX. Moreover, NYNEX argues, a refund in response to the Court's remand could only lower NYNEX's rate of return on special access during the transition period.[51]

2. OCC Opposition

23. Opposition comments were filed on July 14, 1988, by MCI, US Sprint, Contel/Amsat, and the Competitive Telecommunications Association (CompTel), and a joint filing by the Western Union Corporation and Western Union World Communications, Inc., GE American Communications, Inc., and United States Transmission Systems (Joint OCCs).[52] TRT Telecommunications Corporation filed comments on June 24, 1988.

24. Most OCCs maintain that the BOCs should at the least refund the amount paid in excess of Settlement Agreement rates before June 3, 1985, leaving other things as they are.[53] MCI goes further in saying that, if we modify the 5 transition, we should start the full one-year transition on June 3, 1985.[54]

25. The OCCs observe that the Court of Appeals explicitly ordered that refunds be paid: for the BOCs to evade that obligation now through *post hoc* manipulation to achieve a revenue neutral result would be tantamount to contempt of the Court.[55] Furthermore, the OCCs argue, any attempt to recoup the BOCs' own subsequent losses growing out of the Court-ordered refund would be retroactive ratemaking.[56] In fact, they note, the BOCs argued in Commission proceedings throughout the early 1980s (*i.e.*, from the time the BOCs filed special access tariffs in

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and recognizing that collecting these amounts from signatory OCCs would raise other legal issues whose resolution would be difficult and time-consuming," it is willing to suggest a compromise -- that this Commission find that rates from November 1, 1984, through June 1, 1986, are just and reasonable, with that finding limited to special access. *Id.* at 10.

[43] *Id.* US West submits that this Commission may find that rates from November 1, 1984, to June 1, 1986, were just and reasonable, so long as that finding is limited to special access issues. However, US West asserts, if the OCCs insist on adhering to the Settlement Agreement, US West wants a refund from the OCCs for their net benefits under the transition plan. *Id.*

[44] *See* Pacific Bell Comments at 3-7. According to Pacific, contract terms do not reach to non-parties, even when the circumstances between the parties and non-parties are similar. *See also* Southwestern Bell Comments at 5-6 (Commission should treat proceeding like damage claim under Section 208 of the Act and limit any potential refund to OCCs that were parties to Settlement Agreement); US West Comments at 6-7.

[45] Bell Atlantic Comments at 5.

[46] *See* US West Comments at 7 (citing MCI v. FCC, 712 F.2d 517 (D.C. Cir. 1983), as holding that non-signatories to the ENFIA Agreement were not bound by the terms of the Agreement and thus not entitled to refunds); NYNEX Comments at 20 (citing MCI v. FCC, 665 F.2d 1300 (D.C. Cir. 1981), and RCA Global Communications, Inc. v. FCC, 717 F.2d 1429 (D.C. Cir. 1983), as holding that the contractual terms of a settlement agreement are only binding on parties).

[47] Southwestern Bell Comments at 6-7; NYNEX Comments at 18. NYNEX also argues that the refund should have no effect on non-BOC pool members.

[48] Southwestern Bell Comments at 10-11.

[49] US West Comments at 8 n.20.

[50] NYNEX Comments at 22-23.

[51] *Id.* at 23-24.

[52] On July 14, 1988, United States Transmission Systems filed a letter endorsing the comments filed by CompTel.

[53] US Sprint Comments at 7-12; Joint OCC Comments at 10-16; CompTel Comments at 2; Contel Comments at 7-8.

[54] MCI Comments at 54. The Joint OCCs agree with this modification in theory, but do not propose an additional refund. They observe that MCI's proposal would not be consistent with the purposes of the OCC Rate Equalization Plan, and would not mitigate rate shock. Joint OCC Comments at 17. As the Joint OCCs note, the rationale of the judicially-mandated refund is not to avert rate shock retroactively, but to correct this Commission's legal error. *Id.* at 19.

[55] US Sprint Comments at 7-8; Joint OCC Comments at 11; Contel/Amsat Comments at 12-13.

[56] Contel/Amsat Comments at 13-14; MCI Comments at 21-23. MCI notes that the brief for the Commission in *Western Union* argued that the BOCs had no legitimate claim to retroactive payments from the OCCs to compensate for discounted rates, particularly because the BOCs, not this Commission, delayed

Docket 83-1145), that the BOCs needed interim rate increases because the rule against retroactive ratemaking would prevent the BOCs from recouping the losses.[57]

26. The OCCs contend, moreover, that there is no absolute level of relief which this Commission had targeted and which, if exceeded, would warrant a refund from the OCCs to the BOCs.[58] On the contrary, they claim, this Commission reasoned that the OCCs justifiably had been relying on below cost rates for so long -- because the BOCs had consistently failed to increase them -- that a transitional set of discounts would be necessary for a set period of time after the increases began in order to allow the OCCs to adjust.[59] The OCCs are therefore entitled, they continue, to the benefit of the full time span that this Commission intended, beginning with the first step of the plan.[60]

27. The OCCs argue, moreover, that to say that the plan worked is an overstatement: the OCCs have just barely survived while the BOCs prospered.[61] Now that this difficult time is over, the OCCs contend, the discount is not like a loan which must be repaid, any more than the OCC discounts for non-premium switched access must be repaid.[62] This is *a fortiori* the case, they add, since the OCCs passed these savings through to their customers in competitive discounts and could not possibly hope to recoup the money.[63]

28. The OCCs also dispute the contract theory advanced by Ameritech and US West. They insist that there is nothing which compels a mutually exclusive choice between the Settlement and the transition plan. OCCs note that because the Court rejected this Commission's abrogation of the Agreement with respect to the six-months, on June 3, 1985, the Agreement's limitation on rate levels expired and the transition plan could begin.[64]

29. Contel/Amsat maintains that the Court would not have dedicated such "full and deliberate analysis" to sustaining the transition plan only to have that determination negated by contrary inferences drawn from "its last brief observation regarding Commission discretion."[65] Indeed, the Joint OCCs present numerous reasons for the Court's "observation" that this Commission is free to reconsider transitional rates, including the suggestion that if the Court had not made allowance for limited reconsideration of the transition plan, this Commission would be precluded under Section 402(h) of the Communications Act from reconsidering that issue.[66]

30. The OCCs also respond to contentions that the Settlement Agreement absolutely requires the OCCs to begin paying full cost-based rates at the end of a six-month notice period or that they had somehow waived their right to object to such rates.[67] On the contrary, they assert, the purpose of the six-month notice was to enable them to examine the filings for unlawfulness in preparation for an adversary Commission proceeding. The OCCs note that the key language from the Agreement states that "new OCC facility tariffs will not become effective until six months after the date of filing." This does not mean, the OCCs claim, that the tariffs affirmatively will become effective after the six months, notwithstanding any opposition by the OCCs or actions by this Commission. In fact, they state, the BOCs argued this interpretation to the *Western Union* Court and lost.

31. With the exception of Contel/Amsat, the commenters maintain that all OCCs should receive refunds. Commenters favoring refunds to all OCCs argue that the rates in question are more a matter of tariff than contract, and cite numerous Commission Orders for the proposition that all OCCs are to be treated equally with respect to Settlement Agreement rates.[68] TRT and others maintain that excluding non-signatories would violate Section 202(a) of the Communications Act.[69]

32. TRT (not a formal signatory to the Agreement, but bound by the applicable terms of the Agreement by a concurrent agreement with AT&T), asserts that the *Western Union* Court gave no indication that non-signatories are to be excluded.[70] Moreover, TRT maintains, the BOCs' arguments for the proposition that only signatories are entitled to refunds consist "solely of a misapplication of the

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the filing of new special access rates. MCI Comments at 22-23 (citing Commission Brief at 56-59).

[57] MCI Comments at 30-34. According to MCI, the BOCs only revealed their current position in the reply brief filed by US West in the *Western Union* appeal in July 1989 -- after the transition period was over. *Id.* at 34. MCI asserts that since this was too late to give the OCCs effective notice, the BOCs are estopped from seeking a rate increase (whether predicated on the Settlement Agreement or regulatory policy), for the period June 3, 1985, through March 31, 1986, to cover the BOCs' pre-June 1985 refund liability. *Id.*

[58] US Sprint Comments at 11; Joint OCC Comments at 11.

[59] MCI Comments at 40. MCI adds that the transition period was particularly necessary in MCI's development of a private line market, since the transitional rate made up for the relative unavailability of Feature Group D switched access facilities. *Id.* at 41-42.

[60] Contel/Amsat observes that this Commission stated in Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-100, released Mar. 8, 1985 (denying Western Union's petition for a stay), that if the Order abrogating the Settlement Agreement were reversed by a court, it would be within this Commission's discretion to order refunds of the amounts in excess of the Settlement Agreement rates collected pursuant to the Order. Contel/Amsat further notes that the Commission did not indicate that ordering such refunds would require a modification to the transition plan. Contel/Amsat Comments at 16 n.43.

[61] US Sprint Comments at 11. Moreover, US Sprint maintains, regardless of the alleged success of the transition plan, refunds are owed because the BOCs received money to which they were not entitled. According to US Sprint, "the return of money improperly collected cannot be considered a windfall." *Id.* at 12.

[62] MCI Comments at 44.

[63] *Id.*

[64] *Id.* at 39-40; US Sprint Comments at 8-10. According to US Sprint, the Court would not have found the transition plan to be "sensible" if it had accepted US West's argument in its *Western Union* reply brief that there could be no transition after the Settlement Agreement ended. US Sprint Comments at 10.

[65] Contel/Amsat Comments at 13.

[66] Joint OCC Comments at 10 (citing Eastern Carolinas Broadcasting Co. v. FCC, 762 F.2d 95 (D.C. Cir. 1985)).

[67] US Sprint Comments at 10 n.9; MCI Comments at 50 n.123. According to MCI, the signatories bargained for, and AT&T agreed to, notice that was available to all OCCs.

[68] CompTel Comments at 2, 9; MCI Comments at 50 n.123. According to MCI, the signatories bargained for, and AT&T agreed to, notice that was available to all OCCs.

[69] TRT Comments at 5; US Sprint Comments at 13; CompTel Comments at 4.

[70] Even assuming that the rights of the parties should be determined solely by contract law principles, TRT asserts, *Western Union* implies that non-signatory OCCs were intended as

privity of contract doctrine and some creative misinterpretations of quotations taken out of context from the Court's opinions in the *Western Union* case and prior cases relating to the Docket No. 20099 Settlement Agreement and the subsequent ENFIA agreements."[71]

33. Contel/Amsat, a signatory to the Agreement whose telephone operating subsidiaries are not signatories, maintains that only signatories, and not non-BOC LECs who are members of the NECA traffic-sensitive pool, are obligated to refund special access charges.[72] Contel further argues that the incorporation of Settlement Agreement rates into tariffed offerings was not an extension of all of the terms, conditions, and benefits of the Agreement (including the abrogation of Agreement rates) to all OCCs.[73] The Joint OCCs address the impact of the remand on pending Commission proceedings.[74] According to the Joint OCCs, Western Union's petition for reconsideration of this Commission's *Reconsideration Order*[75] is moot by reason of this Commission's inaction and is not affected by the remand. Further, they maintain, petitions seeking review of the extension are likewise moot, since the extension expired in June 1986.

34. The Joint OCCs note that although review of the termination of the rate level investigation with respect to some BOCs is "long overdue," it does not appear that the Court's remand has a direct impact on this issue.[76] Finally, some OCCs object that the data and computations filed by the BOCs are too aggregated and incomplete to be useful, and they request that this Commission direct the BOCs to supplement that data.[77]

3. Replies

35. Replies were filed on July 28, 1988, by Southwestern Bell, US West, NECA, Bell Atlantic, Ameritech, NYNEX, and the Pacific Companies (Pacific Bell and Nevada Bell).

36. BellSouth disputes the OCCs' contention that abrogation of the six-month notice period had no effect on the transition plan. According to BellSouth, this Commission characterized the plan as "a replacement mechanism for dealing with the concerns embodied in the Docket 20099 Agreement, and one adapting to present circumstances." Thus, BellSouth argues, "it defies logic" to suggest that the plan will best serve the original intent of this Commission "if left unchanged in the wake of judicial reinstatement of these notice provisions."[78] Moreover, the BOCs insist, the OCCs would suffer no real damage by a revenue neutral modification, which would merely reduce the amount of discount the OCCs actually realized over full cost-based special access charge rates from 37.5 percent to 25 percent.[79]

37. The BOCs submit that even if refunds are appropriate, this Commission should limit refunds to OCCs' who were parties to the Settlement Agreement.[80] Contrary to the OCCs' assertions, the BOCs maintain that since the right to notice was not a term or condition of the Docket 20099 tariffs, non-signatories may not claim a right to that benefit.[81] Nor do the BOCs find support in *Western Union* for including non-signatories in a refund.[82] Rather, they observe, the Court of Appeals simply did not reach this issue.[83] Further, they assert, it would not be *unreasonably* discriminatory under Section 202(a) to deny refunds to non-signatories.[84]

38. The BOCs also maintain that their data submissions complied with the Bureau's *January 15 Order*.[85] They contend that the filing of customer-specific data should be deferred pending a resolution of the issues in this proceeding.[86]

C. Discussion

39. The Court's Order in *Western Union* remands to us the question of whether to "reconsider what transitional rates would have been appropriate" for the OCCs in light of the Court's conclusion that the Settlement Agreement rates should remain in effect at least to June 3, 1985. The Court's Order in effect gives the OCCs a different transi-

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third party beneficiaries of the Agreement's notice provision. TRT Comments at 7 (pointing to the Court's statement that "[t]he appropriate remedy in this case is an order of appropriate refunds from those who charged the special access rates to those who paid them)".

[71] *Id.* at 4.

[72] Contel/Amsat Comments at 6-8.

[73] *Id.* at 20-21.

[74] Joint OCC Comments at 27-29.

[75] *See supra* note 19.

[76] *Id.* at 29.

[77] Contel/Amsat Comments at 10 n.26; MCI Comments at 16-17; US Sprint Comments at 16-20. US Sprint notes that the BOCs received an extension to gather the necessary data, yet still failed to provide supporting documentation on an individual OCC basis. US Sprint Comments at 17 n.13. Noting that Southwestern Bell cited the proprietary nature of this information in its comments (*see* Southwestern Bell Comments at 4), US Sprint opines that it is more important to obtain specific OCC amounts to allow for verification than to protect historical market share information. US Sprint Comments at 20 n.15.

[78] BellSouth Reply at 5 (citing Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, 102 FCC 2d 1007, 1034 (1985)). The Pacific Companies insist that the last sentence of *Western Union* indicated that the Court considered that "rather than implementing the decision through a straight refund, this Commission might want to restructure transitional rates." Pacific Reply at 8-9. According to the Pacific Companies, a revenue neutral solution would comport with this Commission's original intent for a balanced transition and would be within the parameters that the Court suggested for implementing its decision. *Id.* at 9.

[79] *E.g.*, Pacific Reply at 19.

[80] Bell Atlantic Reply at 2-4; Ameritech Reply at 6-10; Southwestern Bell Reply at 6-12; NYNEX Reply at 13-15. NYNEX further submits that if this Commission orders refunds to signatories, we should exercise our discretion to deny interest on these payments. NYNEX Reply at 15-17. NYNEX cites the "unique circumstances" of this proceeding, *i.e.*, that the refund would be of rate increases that were "prescribed, in part, by the Commission itself," and resulted in rates "that were not excessive' and in fact, were well below cost." *Id.* at 16-17.

[81] Bell Atlantic Reply at 3; Southwestern Bell Reply at 9-10. Specifically, Southwestern Bell contends that non-signatories were only incidental beneficiaries of the low rates which corresponded to those negotiated in the Settlement Agreement.

[82] Southwestern Bell Reply at 7.

[83] Southwestern Bell Reply at 7; Bell Atlantic Reply at 3-4. *Cf.* Pacific Reply at 1-3 (Pacific observes that the Court in *Western Union* refers to parties, not all OCCs).

[84] Pacific Reply at 2; Southwestern Bell Reply at 10.

[85] BellSouth Reply at 6-7; Bell Atlantic Reply at 7-8; NYNEX Reply at 11-12; Pacific Reply at 9-10; Ameritech Reply at 3-6; Southwestern Bell Reply at 3.

[86] BellSouth Reply at 6-7; Bell Atlantic Reply at 8 n.20; Pacific Reply at 9-10.

tion from that prescribed by the Commission. The issue now is whether that difference justifies changing our prescription.[87]

40. The Commission designed the OCC Rate Equalization Plan to give OCCs a transition to full, non-discriminatory rates under the access tariffs. Its main purpose was to mitigate the "rate shock" of moving to the higher special access rates, in order to provide OCCs with a reasonable opportunity to reconfigure networks, services, and other aspects of their businesses that had been implemented under, and possibly premised on, the Settlement Agreement rates. Balanced against the possible harm of rate shock, however, were the legal necessity of ending the discriminatory differential in rates charged to OCCs and those charged to AT&T and other customers, and the benefits to the public of cost-based special access rates as the foundation for full and equal competition in the interexchange private line market.

41. The steps the Commission prescribed for the transition reflected these considerations. The immediate 20 percent increase in rates for all channels was intended to begin the transition to cost-based rates, but without undue rate shock. The termination of all discounts for new circuits as of April 1, 1985 was based on the view that rate shock was not as great a concern for new channels, since customers for those channels were not accustomed to the discounted rates, and that prompt implementation of cost-based rates would provide correct price signals for efficient deployment of new facilities and services. The phased increases for grandfathered channels to 50 percent of the special access tariff rates for six months and 75 percent for a final six months were designed to complete the transition for the in-place facilities that would be most affected by rate shock, while permitting OCCs a reasonable opportunity to prepare for equalized rates. This transition was premised on the assumption that all Settlement Agreement rates had already ended on November 13, 1984.

42. Our review of the record and comments convinces us that the 6 months' notice requirement which the Court determined to be necessary achieved roughly the same purposes, despite differences in the specifics of the two transitions. The OCCs were awarded the right to refunds equivalent to the continuation of the Settlement Agreement rates for all channels, new and existing, until June 3, 1985, almost seven months after the Commission's transition began. The 20 percent increase ordered by the Commission to begin on November 13, 1984 was rolled back for all channels for the full period and the increases both to full tariff rates for new channels and to 50 percent rates for grandfathered channels were delayed from April 1, 1985 until at least June 3, 1985. The overall effect was to maintain the OCC rates at a lower level for a longer period than the Commission planned during the initial stage of the transition, and to permit them to rise more steeply when special access rates actually did take effect, thus ending the transition sooner. The Settlement Agreement transition thereby provided a shorter opportunity to plan for equalized rates, but offered OCCs the offsetting advantage of lower rates during that period. Despite these differences in schedules and steps, the effect in both cases is similar: to afford the OCCs reasonable notice of the eventual rate equalization so that they could plan for the post-Settlement Agreement period.

43. Other differences between the two transitions do not alter their similar functions. For example, one of the major goals of the transition, moving promptly to non-discriminatory cost-based rates, is actually better served by a shorter period. New channels are treated differently under the two transitions, but this difference is reasonable within the framework of each plan. The Commission's transition extended from November 1984 until April 1, 1986, almost a year and a half. Including new channels in a transition of this length would encourage wasteful churn as customers continued to order channels to take advantage of the discounted rates, even though those facilities might be canceled or ordered from a competing carrier once full cost-based rates were in place. This concern is of less weight under the shorter 6 month transition. Customers would be less likely to order and pay for installation of new facilities that would become more expensive or inefficient in 6 months or less. In any event, for new channels, the Settlement Agreement transition is more favorable to OCCs than the Commission's.

44. Another difference between the two transitions is of course the total net savings to OCCs who, according to Bellcore's calculations, benefitted more from the total discounts they received under the Commission's transition than from those under the Settlement Agreement. However, the Commission never sought to establish a specific amount of benefits or discounts. The transition was intended to provide notice and time enough for OCCs to respond to this important change in their budgets.[88] It was not developed or intended as a subsidy and the overall amount of the savings from full, cost-based rates was incidental to the purposes of the transition.

45. On reflection, then, we conclude that the delay in the application of full special access rates to the OCCs until June 3, 1985, as required by the Court, substantially achieves the purposes envisioned by the Commission in its own transition plan, and that the further stages of the transition scheduled by the Commission should therefore be eliminated as unnecessary delays to achieving a fair, level playing field based upon cost-based rates. We are therefore terminating the OCC Rate Equalization Plan effective on the date that the Settlement Agreement rates were legally abrogated, June 3, 1985.[89]

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[87] The Court's holdings appear to preclude the argument presented by Ameritech and US West that the BOCs acquired a legal, contractual right to charge the OCCs full cost-based rates once the six months' notice expired. Any contractual right other than the six months' notice that survived the Settlement Agreement's abrogation would imply that the transition was unlawful, at least in part. The Court's affirmative finding that the transition was lawful justifies, if not requires, rejection of arguments to the contrary on remand. That argument also appears inconsistent with the Settlement Agreement itself, which was to expire once successor tariffs consistent with the Agreement took effect.

US West's argument that the Court cancelled the transition in reversing the Commission's abrogation of the Settlement Agreement is similarly incorrect. The Court expressly affirmed both the abrogation of the Settlement Agreement (aside from the six months' notice provision) and the legality of the Commission's transition.

[88] *See Special Access Cost Order* at para. 32-39.

[89] *A fortiori*, we believe that adding the full period of the OCC Rate Equalization Plan to the full period of the Settlement Agreement notice period, as proposed by MCI, would be grossly

46. In terminating the OCC Rate Equalization Plan, we do not imply that the BOCs are authorized to rebill special access customers for facilities and services that were provided under the prescribed discounts. The OCCs were billed at the rates specified in the applicable tariffs then in effect, as required by Section 203(a) of the Communications Act. A strong presumption applies against subjecting customers to retroactive rate revisions. We do not believe the circumstances of this case warrant the drastic remedy of retroactive rate increases, especially in view of the fact that the Commission itself prescribed the transition and the Court concluded that transition was lawful.

47. We also cannot accept the BOCs' "equitable level of support" theory, at least *in toto*. The BOCs apparently propose that refunds owed to all OCCs under the Settlement Agreement be wiped out because the total amount of the discount to OCC rates after June 3, 1985 was greater than the total of the refunds. However, these aggregate figures do not necessarily indicate that *specific* OCCs received greater benefits than the Settlement Agreement transition would have given them. An OCC that used the notice period to begin reconfiguring its services and facilities to emphasize switched services, for example, might have received little benefit from the discount. We do not believe it would be equitable or consistent with the Court's mandate to offset that OCC's Settlement Agreement refund against discounts received by its competitor OCCs.

48. A more limited and targeted set-off will give reasonable effect to the termination of the transition after June 3, 1985 in a manner that should be fair to all concerned. Specifically, we conclude that the BOCs should be permitted to set off refunds due to each OCC under the Settlement Agreement by the amount of any discounts to rates the OCC received under the Commission's now-terminated OCC Rate Equalization Plan. This set-off is fair to the OCCs because it gives them the full benefit of the Settlement Agreement rates, while also shielding them from liability for unanticipated, retroactive rate increases under the revised Plan. In fact, the effect of this set-off is to give each OCC the transition plan that is most beneficial to it financially. It simply does not give OCCs a windfall in the form of a double transition that was never intended by the Commission or necessary to achieve the purposes the transition was fashioned to serve. Though it differs somewhat from that proposed by several of the BOCs, this set-off is fair to them as well, giving reasonable recognition to the termination of the OCC Rate Equalization Plan while barring the collection of retroactive rate increases.[90]

49. We further conclude that OCCs who did not sign the Settlement Agreement are also entitled to appropriate refunds. *Western Union* stated that "the appropriate remedy in this case is an order of appropriate refunds from those who charged special access rates *to those who paid them*."[91] In the Commission's decision finding that the Settlement Agreement was in the public interest, we noted that the rates filed pursuant-to the Agreement "will apply to all OCCs, whether or not they are parties to this Settlement Agreement."[92] Thus, throughout the history of the Docket 20099 rate period, non-signatory OCCs have been subject to the same tariffed rates as the signatories. Accordingly, since the Court's directive that "those who paid [the special access rates]" receive refunds appears to include any OCC that obtained special access service pursuant to a tariffed service offering incorporating Settlement Agreement rates, we conclude that all OCCs are entitled to appropriate refunds.[93]

50. The BOCs and Contel/Amsat argue that only signatories should receive refunds because the six-month notice provision is in the Settlement Agreement contract, but not in the associated tariffs. We note, however, that when this Commission accepted the Settlement Agreement, we were aware of our statutory duty to treat "like" carriers similarly. *See* Section 202(a) of the Communications Act, 47 U.S.C. § 202(a). In accordance with Section 202(a), we identified non-signatories as carriers to be treated similarly vis-a-vis the Settlement Agreement. Moreover, AT&T and the BOCs have routinely filed tariffs treating signatories and non-signatories alike. We therefore conclude that even if the rights of the parties in this proceeding are to be determined under contract law principles, then non-signatory OCCs were intended as third-party beneficiaries of the Settlement Agreement's notice provision.

51. In order to implement both the Court's mandate regarding Settlement Agreement refunds and this Commission's decision to terminate the OCC Rate Equalization Plan, we direct the BOCs to file a report within 30 days of the release of this Order identifying for each OCC all refunds owed for the period prior to June 3, 1985, all discounts to special access rates which the BOC claims as an offset to those refunds, the net amounts, and interest on the net amounts calculated at the rates applied by the Internal Revenue Service. *See also* para. 77 *infra*. This report shall be served upon each OCC that paid rates subject to the Settlement Agreement or its successor. Any OCC that believes the calculation of its refund is inaccurate under the terms of this Order may file an opposition report, detailing as far as possible its disagreement with the BOC no later than 15 days after the BOC report is filed and served. Each BOC is directed to pay the applicable net refund owed to each OCC no later than 30 days after the date on which the report is filed. In the event any OCC has filed an opposition report, the BOC shall also refund the amount claimed by the OCC or explain in detail the reasons why it believes the OCC's calculation is incorrect.

III. LINKAGE OF TRANSITION PLAN TO THE RATE LEVEL INVESTIGATION

A. Background

52. On December 20, 1985, Western Union filed a petition for modification of our prescription of the OCC Rate

discriminatory, generating a wholly unnecessary windfall to OCCs without contributing to the goals of the Commission or the Communications Act.

[90] We also agree that, in computing the amount of any refund, the BOCs should hold NECA and its pool members harmless.

[91] *Western Union*, 815 F.2d at 1505 (emphasis supplied).

[92] AT&T Co., 52 FCC 2d 727, 734 (1974).

[93] Having reviewed the various D.C. Circuit decisions cited by the BOCs and the OCCs regarding the rights of non-signatories, we conclude that none of these cases is dispositive of the issue in the instant proceeding.

Equalization Plan.[94] Western Union requested, essentially, that the final step in the Rate Equalization Plan be delayed pending completion of the Docket 85-166 investigation of special access rates.[95] Western Union argued that "[c]entral to the Commission's adoption of a transition plan was its recognition of the need to further investigate special access charges before subjecting the OCCs to the full impact of the proposed charges."[96] Western Union claimed that "a major predicate for [the Commission's] selection of a one-year phase-in period was the belief that such a period would afford sufficient time" to complete our special access investigation.[97] Western Union contended that it is would be unfair to subject OCCs to the full charges in the BOC tariffs before the level and structure of lawful special access rates could be determined. *Id.* at 8-9. Western Union also discussed at length the negative impact even discounted special access rates were having on its ability to market its services successfully. Even if this Commission were persuaded that the full rates were just and reasonable, Western Union argued, this negative impact alone would justify extending the transition from the Settlement Agreement rates. Western Union stated specifically, however, that "this argument is not the basis of the instant petition."[98]

53. The Commission considered Western Union's request in the January 1986 *Reconsideration Order*. It found Western Union's arguments unpersuasive because these arguments reflected a misreading of the *Special Access Cost Order* which adopted the OCC Rate Equalization Plan. It noted explicit language from that Order rejecting similar arguments for extending the plan pending completion of the investigation of the special access tariffs.[99] The Commission reemphasized that the rationale underlying the adoption and initial timing of the plan was that "a one-year period... reasonably balanced the potential harm to the public interest that would result from abrupt rate changes against the need to move swiftly toward cost-based rates which more fairly and efficiently allocate costs among customers."[100] In other words the decision in the *Special Access Cost Order* to adopt the OCC Rate Equalization Plan was prompted by concerns about potential "rate shock," not by the separate conclusion that some aspects of the special access tariffs required investigation. By ignoring rate shock concerns, Western Union mischaracterized the basis of the transition plan. Western Union's petition, therefore, was denied. On February 26, 1986, Western Union filed a petition seeking reconsideration of our January 24, 1986, *Reconsideration Order* insofar as that Order denied Western Union's petition for modification.[101]

B. Contentions of the Parties

54. Western Union contends that the *Reconsideration Order* "constitutes a radical and unexplained departure from the rationale underlying [this Commission's] prescription" of the OCC Rate Equalization Plan.[102] It says that "it is self-evident from the [*Special Access Cost Order*] that the Commission expected that it would complete its further investigation of special access charges before the end of the transition period." Western Union quotes the following language from that Order:[103]

> First, we believe that the proposed one-year period, with two six-month steps, sets a reasonable schedule. OCCs should, by this mechanism, have adequate notice from which to plan for the future. *That period should also afford enough time to examine and adjust the special access rates to the extent this proves necessary.* The rate differential between the OCCs and AT&T will also be relatively brief. The comments provide no specific information that a different period strikes a better balance of these interests.

55. Western Union also claims that the *Reconsideration Order* "is wrong" in comparing Western Union's proposed modification of the transition schedule with previously rejected proposals.[104] Unlike those proposals, Western Union asserts, it seeks only to delay the final step of the phase-in, not to "turn back the clock" on previously completed steps.[105] Moreover, Western Union argues, the *Reconsideration Order* failed to address the argument that the discounted transition rates are harming it and other OCCs, or its assertion that an extension of the transition would be warranted even if the Commission were to find the full rates just and reasonable. For these reasons, Western Union asserts, this Commission should reconsider its previous denial of the petition for modification.

56. Opposition to Western Union's petition were filed by the Ameritech Operating Companies (Ameritech), the Bell Atlantic Telephone Companies (Bell Atlantic), BellSouth Corporation (BellSouth), the Cincinnati Bell Telephone Company (Cincinnati Bell), the New York and New England Telephone Companies (NYNEX), and the Southwestern Bell Telephone Company (Southwestern Bell). These parties uniformly assert that no previous Commission Order supports Western Union's claims that the transition plan was adopted out of concern that the proposed special access rates might be unlawfully high or that the plan was intended to remain in effect until completion of the special access tariff investigation. Western Union's petition should be denied, these parties contend, because it has raised no

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[94] Western Union Petition for Modification, filed Dec. 20, 1985 (Petition for Modification).

[95] Specially, Western Union sought to delay the transition plan pending "implementation" of a final Order in the investigation. *Id.* at 1-2; *see also Reconsideration Order* at para. 59.

[96] Petition for Modification at 2.

[97] *Id.* at 3.

[98] *Id.* at 6.

[99] *Reconsideration Order* at para. 60 (citing *Special Access Cost Order* at para. 36) (emphasis in petition). Western Union cited the same language emphasized above in its petition seeking modification of our prescription of the OCC Rate Equalization Plan. *See* Petition for Modification at 2.

[100] *Id.* at paras. 60-61.

[101] Western Union Petition, *supra*, note 1.

[102] *Id.* at 3.

[103] Western Union Petition at 3-4 (quoting *Special Access Cost Order* at para. 36) (emphasis in petition). Western Union cited the same language emphasized above in its petition seeking modification of our prescription of the OCC Rate Equalization Plan. *See* Petition for Modification at 2.

[104] Western Union Petition at 4-5.

[105] *Id.* at 5.

arguments in support of its request for an extension of the transition plan which were not fully discussed and rejected by this Commission in the *Reconsideration Order*.

57. Several parties raise additional arguments opposing the Western Union petition. Ameritech, for example, contends that, at the time the OCC Rate Equalization Plan was adopted, this Commission implied that continuing the transition for a period longer than one year would be unlawfully discriminatory.[106] In response to Western Union's argument that the transition rates are harming OCCs generally, Cincinnati Bell has supplied data purporting to show that, during calendar year 1985, demand for special access services by OCCs other than Western Union increased by 31 percent, while Western Union's demand during this period decreased by 17 percent.[107] Several parties contend that, even if this Commission ultimately determines in the special access investigation that LEC special access rates are unlawfully high, Western Union and the OCCs are protected adequately by the existence of an accounting order and the prospect of receiving refunds if rates are found to be excessive.[108] Finally, Southwestern Bell asserts that, to the extent Western Union is concerned that the transition should continue until completion of the investigation, this concern has been mitigated by the fact that a significant portion of the investigation was completed.[109]

58. The Western Union reply[110] reiterates the argument that this Commission intended to establish a relationship between the duration of the transition plan and completion of our investigation of LEC special access tariffs. Western Union also claims that the *Special Access Cost Order* specifically determined that the possibility of refunds would not afford OCCs adequate protection from excessive rates. Finally, Western Union asserts that it has raised a "new" matter for our consideration, namely, that even discounted rates are having a substantial impact upon Western Union and are creating a danger that uneconomic bypass will result if Western Union is forced to pass above-cost rates through to its customers.

59. On July 14, 1988, Western Union responded to the Common Carrier Bureau's request for comments and data on the *Western Union* remand[111] by volunteering that the issue of the timing of the transition plan relative to the special access investigation is now moot.[112]

C. Discussion

60. As an initial matter, we note that Western Union has effectively withdrawn its petition for further reconsideration by stating in its July 14 1988, comments that the issue raised in its petition is now moot. Moreover, our decision in this Order to reconsider and terminate the OCC Rate Equalization Plan also naturally implies that any *extension* of the Plan is also unwarranted. Nevertheless, we will also address the merits of the petition. We conclude that Western Union's petition fails to present new arguments, facts, or changed circumstances -- criteria which must be met if a petition for reconsideration is to be granted.[113] The arguments that it now repeats are also without merit.

61. Western Union's claim that the recognition of a need to investigate special access tariffs was "central to the Commission's adoption of a transition Plan" simply is incorrect. We expressly stated in the *Special Access Cost Order* that the purpose of the OCC Rate Equalization Plan was to mitigate rate shock.[114] Our discussion of that plan in that Order amply indicates that the need to examine the rates further was not a major factor underlying adoption of the plan. We were concerned with the disparity between the Settlement Agreement rates and cost-based special access rates. This is apparent from the very beginning of our discussion, the first paragraph of which states:

> [T]he Commission is faced with the difficult task of implementing just and reasonable cost-based special access tariff rates for special access services without causing unjustifiable "rate shock." Although some questions regarding the cost support still remain and will be subject to further investigation, it is clear that cost-based special access tariff rates will be substantially higher than the rates currently paid by the OCCs pursuant to the 20099 Agreement.[115]

62. An examination of the entire record of the Docket 83-1145 proceeding, moreover, indicates that the need to investigate special access tariffs could not have been "central" to our decision to institute a transition.[116] We thoroughly discussed the need for a transition and tentatively decided to adopt the OCC Rate Equalization Plan long before we made the statement so heavily relied upon by Western Union in the *Special Access Cost Order*.[117] Indeed,

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[106] Ameritech Opposition to Petition for Reconsideration, filed Mar. 10, 1986, at 3.

[107] Cincinnati Bell Opposition to Petition for Reconsideration filed Mar. 10, 1986, at 3.

[108] Ameritech Opposition at 2; Cincinnati Bell Opposition at 2.

[109] Southwestern Bell Opposition to Petition for Reconsideration, filed Mar. 11, 1986, at 2-3 (citing Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, FCC 86-52, released Jan. 24, 1986 (*Phase I Order*)).

[110] Western Union Reply in Support of Petition for Reconsideration, filed Mar. 19, 1986.

[111] *See January 15 Order*.

[112] Comments of the Joint OCCs at 27-28.

[113] *See* ITT World Communications, Inc., 90 FCC 2d 783 (1982); 47 C.F.R. § 1.106.

[114] *Special Access Cost Order* at paras. 27-28, 35.

[115] *Id.* at para. 27 (citations within paragraph and footnote omitted).

[116] Western Union, citing paragraph 33 of the *Special Access Cost Order*, also contends that the transition discount was adopted due to a concern that the impact of unreasonably high rates upon OCCs might produce "uneconomic bypass." Western Union Reply at 5. There is no explicit or implicit discussion of bypass in paragraph 33 of the *Special Access Cost Order*, nor in any other portion of our discussion of the OCC Rate Equalization Plan. Paragraph 33 indicates that increases in LEC special access rates "would increases the pressures on the OCCs in attempting to compete with AT&T." *Special Access Cost Order* at para. 33. We did not, however, speculate about actions the OCCs might take in response to these pressures.

[117] *Compare Special Access Cost Order* with *November 9 Order* at paras. 84-97.

the outline of what eventually became the transition plan was proposed by the Ameritech Operating Companies eight months prior to release of the *Special Access Cost Order*.[118]

63. We are equally unpersuaded by Western Union's argument relating to the timing of the transition plan. Contrary to Western Union's claim, it is not "self-evident" from the language of the *Special Access Cost Order* that we intended to tie the duration of the transition to completion of the special access investigation. The Order consistently refers to the transition as lasting for one year without conditions. Western Union would have us create this condition largely from the single sentence "That period should also afford enough time to examine and adjust the special access rates to the extent this proves necessary." This sentence does of course reflect one of the basic goals of this proceeding -- to achieve reasonable special access rates for all customers -- but the Commission went on to make clear that the remedy envisioned to accomplish this was not an extension of the transition, which would benefit only the OCCs and only to the extent that they had facilities in place on November 8, 1984. The next paragraph of the *Special Access Cost Order* states:

> 37. We decline to postpone the transition until after completion of our investigation of special access, as requested by GTE Sprint and other commenters. Although some questions still remain regarding the cost support and rate structures, we believe that we have gone as far as we can with our pre-tariff investigation. The OCCs will be protected by two measures while the tariffs are in place. First, the OCCs will be given substantial discounts from the tariff rates for one year. Second, we will continue our investigation and, if it is determined that the local exchange carriers have earned more than the allowable 12.75 percent rate of return on special access, customers will be able to seek refunds.

Contrary to Western Union's claim that a connection between the transition period and the investigation is "self-evident," this discussion makes it clear that the remedy for excessive rates was to be refunds for all customers, not an extension of the discount solely for the OCCs and their grandfathered circuits. Thus, as we previously noted in the *Reconsideration Order,* we specifically rejected in the *Special Access Cost Order* suggestions that the timing of the transition and the investigation should be linked.[119]

64. Moreover, the special access rates in fact were revised and reviewed within the one year period of the transition. Industry-wide revisions to access rates, including special access, took effect in October 1985, following review by the Common Carrier Bureau. The Bureau's subsequent data request indicated that almost none of the special access rates in effect from April until replaced on October 1 earned unreasonable returns. Its actions with respect to the post-October 1 rates are discussed *infra.*

65. Finally, we note Western Union's claim that the *Reconsideration Order* fails to address its argument that the transition plan should be extended because even the discounted rates it was receiving under the plan were proving to be harmful to its ability to market its services successfully, and that continuing the discount would be warranted even if the full special access rates are just and reasonable. Aside from the fact that Western Union's pleading of this argument does not appear to be consistent with its earlier pleadings,[120] we reject it for several reasons.

66. The establishment of a continuing, open-ended discount from cost-based rates for Western Union or any other carrier would be fundamentally at odds with one of the primary goals of the access charge plan, namely, to eliminate unreasonable discrimination and undue preference among rates for interstate telecommunications services.[121] Equally important for present purposes, Western Union's argument falls to recognize that the Commission's decision to establish the OCC Rate Equalization Plan rested upon a balance of equitable considerations. These considerations included not just the effect of cost-based rates upon the OCCs, but preservation of essential services to the public, the establishment of a market for telecommunications services in which all carriers compete on an equal footing, the need to avoid placing upon other consumers the potential burden of subsidizing the discounts provided to OCCs, and the legitimate interest of the BOCs in earning more for special access service than under the Settlement Agreement rates, which we determined to be unlawfully low.[122]

67. Western Union makes no effort to balance these considerations. Its argument, essentially, is that it should continue to receive discounts -- even if the full rates are just and reasonable and the discounted rates are unlawfully low -- because it cannot adapt to cost-based rates. It does not take into account any countervailing interests, other than to claim that there "is no showing that the absorption of the transition discounts is having any serious adverse impact on the BOCs."[123] Such a claim, in addition to being at odds with available evidence,[124] suggests that Western

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[118] *See* Ameritech Operating Companies Petition to Expedite Transition to Special Access Tariff Rates, filed Aug. 9, 1984.

[119] *Reconsideration Order* at para. 60 (citing *Special Access Cost Order* at para. 37). Western Union's claim that its current proposal is different from the proposals rejected in the *Special Access Cost Order* is particularly unpersuasive. Both then and now, petitioners sought to tie the transition plan to the investigation of special access rates. The fact that Western Union now seeks only to extend the final 25 percent discount under the plan differentiates its proposal only as to the degree of relief it seeks, not the nature of the proposal itself.

[120] In its December 20, 1986, Petition for Modification at 5-6, Western Union, in the context of discussing the harm caused it by transition rates, said: "Even if the Commission were persuaded that the currently effective special access tariffs are just and reasonable, the Commission would be fully justified in prolonging the transition period for the purpose of affording the OCCs and their customers additional time to adapt to this drastic change in the cost environment. *However, this is not the basis of the instant petition.*" In its petition for reconsideration, Western Union quotes only the first sentence of this statement, and thereupon claims that the *Reconsideration Order* "makes no effort to address the harm that is currently being suffered by Western Union ..." Western Union Petition for Reconsideration at 5-6.

[121] MTS and WATS Market Structure, 97 FCC 2d 682, 683 (1983); *November 9 Order* at para. 95.

[122] *See, e.g., November 9 Order* at para. 91.

[123] Western Union Petition at 6.

[124] Data acquired in the course of the Docket 85-166 investigation demonstrated that many BOCs earned rates of return far

Union is interested mainly in subsidies, not equities. In any event, Western Union's argument fails to reflect the blending of equitable considerations which formed the basis for establishing a brief transition and, therefore, provides insufficient justification for extending the transition period.

68. For the reasons stated above, we deny Western Union's petition for reconsideration.

IV. THE COMMON CARRIER BUREAU'S EXTENSION ORDER

A. Background

69. On March 27, 1986, the Common Carrier Bureau released an *Extension Order* in Docket 85-166.[125] That Order found *inter alia:* (1) that there was no current basis for concluding that special access rates, averaged industry-wide, would become unreasonable upon the occurrence of the final step in the OCC Rate Equalization Plan; (2) that in 15 BOC study areas, nevertheless, implementation of the final step appeared likely to result in unreasonably high rates for all customers, in the absence of rate adjustments; and (3) that rates of return for certain BOCs were so low as to provide strong evidence that their underlying rates were unlikely to be unreasonable.[126] These findings were based upon an analysis of actual operating data submitted by BOCs.[127] Those findings prompted the Bureau to extend the OCC Rate Equalization Plan for two months in 15 BOC study areas and direct the 10 BOCs providing service in those areas to file either justifications for their currently effective rates or revisions calculated to reduce their rates of return to authorized levels. The Bureau terminated the rate level portion of the Docket 85-166 investigation for the BOCs with low earning levels.[128]

70. AT&T and Western Union filed applications for review of the *Extension Order.* Southwestern Bell filed a petition for reconsideration. Opposition, replies, and comments were filed by Southwestern Bell, Western Union, RCA Communications, Inc. (RCA), ADAPSO, and Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone and Telegraph Company, and Pacific Northwest Bell Telephone Company (US West).

B. Contentions of the Parties

1. AT&T Application for Review

71. AT&T argues that the two-month extension "flies in the face of the Commission's directive to end the [special access line rate] subsidy"; violates the Communications Act; and is an inappropriate remedy for excessive special access rate.[129]

72. Western Union and RCA filed opposition to AT&T's application for review. Their opposition argue that the Bureau's temporary extension of the transition plan was reasonable and consistent with the purpose underlying the plan, particularly because this action was based upon data supplied by the BOCs themselves which showed excessive earnings. ADAPSO, in comments supporting AT&T's application for review, argues that the *Extension Order* violates the Communications Act by allowing discriminatory rates to remain in effect.

2. Southwestern Bell Petition for Reconsideration

73. The Southwestern Bell petition for reconsideration argues that the two-month extension violates Section 205 of the Communications Act, 47 U.S.C. § 205, because the Bureau failed to determine whether the BOCs tariffed, non-discounted rates were just and reasonable before prescribing a continuation of discounted rates for OCCs. Southwestern Bell asserts that absent a finding that the non-discounted charges violates the Communications Act, the Bureau was not authorized to prescribe continuation of the discounted charges.[130]

74. Western Union filed an opposition to Southwestern Bell's petition for reconsideration. Western Union's opposition repeats the arguments it made in opposition to AT&T's application for review. Southwestern Bell filed a reply, in which it reiterates its argument that the Bureau violated the Act by prescribing charges without first finding that the underlying rates were unlawful.

3. Western Union Application for Review

75. Western Union argues that the decision to terminate the investigation of the rates of carriers whose rates of return were less than 10 percent "is based on an erroneous factual finding which is not supported by the record, is arbitrary and capricious, and is contrary to sound policy." Western Union Application for Review at 1. Western Union states that there is no basis for the Bureau's conclusion that rates in those states for which the investigation was terminated could not be unreasonably high. It argues that the BOCs' data which the Bureau used in deciding to terminate the rate level portion of the investigation were full of defects and anomalies. It notes that these defects were demonstrated in the opposition cases filed by Western Union and other parties in Phase II of Docket 85-166, yet the Bureau ignored that evidence and instead accepted the BOCs' data. This action, it concludes, was arbitrary and capricious. Western Union repeats several times the argument that the methodology used by the BOCs to calculate their rates of return violates this Commission's Rules. Western Union also contends that the Bureau's failure to determine whether the rates in question were just and reasonable ill serves the public interest. It asks this

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below authorized levels from the initial special access services, with some reporting negative rates of return on these services. *Extension Order* at App. A.

125 *See supra* note 21..

126 *Id.* at paras. 2-3.

127 *See* Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, released Jan. 17, 1986 (*Data Request Order*). The *Data Request Order* required each BOC subject to the OCC Rate Equalization Plan to compute and submit actual rates of return on a state-by-state basis for each of two periods: April through September of 1985, during which the transition plan's 50 percent discount applied, and October through November of 1985, during which the transition plan's 25 percent discount applied.

128 *Extension Order* at paras. 2-3. The *Extension Order* also contained a section ordering certain US West Companies to refund excessive amounts earned on special access services during the period from April through September of 1985 or show cause why refunds were not warranted. *Id.* at paras. 20-21. *See* note 22, *supra.*

129 AT&T Application for Review at 6.

130 Southwestern Bell Petition for Reconsideration at 4.

Commission to reverse that Bureau action and continue to investigate rates in all states until we determine whether these rates are just and reasonable.

76. US West filed a response to Western Union's application for review. US West defends the accuracy of the *Data Request Order*. As noted above, these data provided the basis for the Bureau's decision to extend temporarily the transition plan on a carrier-specific basis and the Bureau's decision to terminate the investigation of some BOC rates.

C. Discussion

1. Transition Plan Extension

77. Our determination in this Order that the OCC Rate Equalization Plan should be terminated as of June 3, 1985 requires as a logical corollary that we reverse the Bureau's extension of the transition in some jurisdictions beginning on April 1, 1986. In computing the total set-offs associated with the transition, the BOCs may include any discounts to tariffed special access rates received by OCCs as a result of the Bureau's extension.

2. Termination of Rate Level Investigation

78. Western Union asks to set aside the Bureau's decision to terminate the rate level portion of the Docket 85-166 investigation with regard to certain carriers because, Western Union claims, there "is no basis in the record for which the rate level investigation was terminated..." and that "the Bureau's unquestioning acceptance of the BOCs' data is arbitrary and capricious.[131] We deny Western Union the relief it seeks because, as detailed below, the first of its contentions reflects a misreading of the *Extension Order*, and the second is incorrect.

79. The *Extension Order* terminated the rate level portion of the Docket 85-166 investigation of rates earning relatively low returns because the Bureau concluded that "it is highly unlikely any action contemplated by us or requested by any party to the investigation would cause BOCs earning less than a 10 percent rate of return in the special access category to revise their rates in a manner which would generate earnings in excess of authorized levels."[132] The Bureau did not conclude, as Western Union contends, that the rates could not be unreasonably high, and did not find the rates to be just and reasonable. The Bureau concluded only that the rates appeared unlikely to be unreasonably high. This distinction is important for several reasons.

80. The Bureau terminated a portion of the rate level investigation to conserve its limited enforcement resources and apply those resources "to the task of investigating further only the special access rate levels of carriers whose rates of return suggest that their underlying rates may be unreasonable.[133] The Bureau, when acting in our stead under our Rules, has authority to make determinations as to the application of its limited enforcement resources. Equally important, the Bureau's decision to terminate the investigation of certain rates without determining that those rates are or are not just and reasonable did not foreclose Western Union or any other member of the public from challenging the BOC rates through the complaint process established under the Communications Act.[134]

81. Nor do we believe there is a basis for concluding, as Western Union urges us to do, that the Bureau's action is arbitrary and capricious. To the contrary, the Bureau explained in the *Extension Order* that its decision was based upon an examination of the record of the Docket 85-166 proceeding, particularly rate of return information submitted by the BOCs in that proceeding.[135] We share the Bureau's belief that data of this nature -- data based upon actual operating results -- provided significant, persuasive evidence to support the limited conclusion that these rates did not warrant further investigation.[136] Western Union has provided no persuasive evidence to the contrary. Indeed, its primary challenge to the BOCs' reported rate of return data -- namely, that the BOCs employed an inappropriate methodology to allocate federal and state income taxes in developing their rate of return data -- was examined by the Bureau in another context and appears to be without foundation.[137] For this and the reasons stated above, we deny Western Union's application for review of the *Extension Order*.

V. ORDERING CLAUSES

82. THEREFORE, IT IS ORDERED, that the Western Union Telegraph Company petition for further reconsideration, filed February 26, 1986, of Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 86-54, released Jan. 24, 1986, IS DENIED.

83. IT IS FURTHER ORDERED, that the Western Union Telegraph Company application for review, filed May 27, 1986, the American Telephone and Telegraph Company application for review, filed April 25, 1986, and the Southwestern Bell petition for reconsideration, filed April 28, 1986, of the Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 3436, released March 27, 1986, ARE GRANTED to the extent indicated in this Order and otherwise ARE DENIED.

84. IT IS FURTHER ORDERED, that the OCC Rate Equalization Plan, as prescribed in the Commission's *Special Access Cost Order* and other Orders IS TERMINATED.

85. IT IS FURTHER ORDERED, that the Regional Bell Operating Companies shall calculate refunds due each of customers for payments collected in excess of those permitted under the applicable Docket 20099 Settlement Agreement Tariffs for special access services for the period November 13, 1984, to June 3, 1985, less the amount of any set-off associated with discounts under the terminated OCC Rate Equalization Plan for the period beginning on

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131 Western Union Application for Review at 4.

132 *Extension Order* at para. 23.

133 *Id.*

134 47 U.S.C. § 208.

135 *Extension Order* at para. 23.

136 As stated in the *Extension Order*, the decision to terminate the rate level phase of the investigation with regard to certain BOC rates did not terminate other phases of the investigation concerning such rates. *Extension Order* at para. 22 n.35.

137 The Bureau examined this question in the context of petitions filed by certain BOCs for waiver of Part 69 Rules governing the allocation of federal and state income taxes. *See* Waiver of Sections 69.402(a) and 69.402(c) of the Commission's Rules, Mimeo No. 6436, released Aug. 19, 1986.

June 3, 1985. The National Exchange Carrier Association's traffic-sensitive pool shall not be reopened for purposes of these refunds. The Regional Bell Operating Companies shall report to this Commission not later than August 12, 1993 as to the method and schedule by which such refunds are being implemented and shall make refund payments not later than September 13, 1993. This Refund Report shall also be served on all customers or their successors who took service under the Docket 20099 Settlement Agreement tariffs at the same time it is filed with the Commission. Any customer who believes the calculation of its refund is inaccurate under the terms of this Order may file and serve on the RBOC an Opposition Report detailing as far as possible its disagreement with the refund calculation no later than August 27, 1993. In the event any carrier has filed an Opposition Report, the RBOC shall refund the amount claimed by the customer on the date refunds are due, or explain in detail the reasons why it believes the customer is incorrect in a Reply Report filed with this Commission and served on the customer not later than September 13, 1993, the date the refund would otherwise be due. Interest on the net amount of any refund shall be computed according to the schedule published by the Internal Revenue Service.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of:

HOME/SYSTEMS JOINT VENTURE — File No. 5617-CM-P-83

For Authority to Construct and Operate a Station in the Multichannel Multipoint Distribution Service on the E-Group Channel in Parkersburg, W. Va.

ORDER ON RECONSIDERATION

Adopted: June 30, 1990; Released: July 12, 1993

By the Chief, Domestic Facilities Division:

1. *Introduction.* Home/Systems Joint Venture (Home/Systems) filed a petition for reconsideration of the dismissal by the Domestic Facilities Division (Division) on delegated authority of its application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channel at Parkersburg, West Virginia, and requested reinstatement of its application.

2. *Background.* As a result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of the application, pursuant to 47 C.F.R. §21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that Home/Systems was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. Home/Systems was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of the letter.[1] Home/Systems was also advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Home/Systems provided some, but not all, of the requested information. Pursuant to Sections 21.20(d) and 21.28(d) of the Rules, the Division dismissed Home/Systems' application for failure to comply completely in a timely manner with the Division's request for information. While not arguing that the requested information had been submitted, Home/Systems provides a copy of a letter to Mr. Embrescia of Parkersburg-Marietta Broadcasting, dated November 18, 1986, from Home/Systems' attorney, containing a proposal from Home/Systems for use of the Parkersburg-Marietta Broadcasting site. The letter concludes: "Enclosed herein is a check for $100 to be applied to the cost of such an option. After you have looked over these materials, please get back to us so that we may finalize an agreement as soon as possible." A photocopy of the check is included. Home/Systems provides no final agreement. Home/Systems argues that its application should be reinstated because it in fact cured the deficiency "within the 30 days specified" in the deficiency letter.[2]

4. *Discussion.* As of the date of the Division's dismissal letter, Home/Systems still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, Home/Systems had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site as required by Section 21.15(a).[3] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[4] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. Home/Systems had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). Its failure to submit curative amendments for almost two years substantially impeded the expeditious offering of MMDS at Parkersburg, West Virginia. Also, Home/Systems' failure to respond in a timely manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communications Act. *By Direction of the Commission Letter to US West*, 60 Rad. Reg. 2d (P&F) 8, 9 (1984). At the time of the dismissal, Home/Systems had not provided the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of

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[1] The deficiencies cited in the letter were the absence of: (1) correct map indication of coordinates of the proposed site; (2) certification of financial qualifications required by Section 21.17; (3) sufficient tariff showing, pursuant to Item 19 of FCC Form 435 and 47 C.F.R. §21.13; (4) specification of beam tilt; (5) system plan for maintenance center pursuant to Item 18 of FCC Form 435; and (6) a fully executed lease or option to lease/buy agreement pursuant to 47 C.F.R. §21.15(a).

[2] Home/Systems also argues that because the name and address at the top of the dismissal letter were incorrect, the notice of dismissal is defective. We disagree. As Home/Systems admits, the file number and the references in the letter properly correspond to Home/Systems' application and deficiency letter. In any event, Home/Systems clearly understood that the letter applied to it, since it responded with a Petition for Reconsideration. Moreover, Home/Systems does not contend non-receipt of the dismissal letter.

[3] Even if Home/Systems was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Section 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia:* "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: . . . (2) As the Commission, at any time after the filing of an application . . . may require from any applicant . . . to enable it to determine whether a radio authorization should be granted. . . ."

[4] Revision of Part 21 of the Commission's Rules, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted.")

Home/Systems' MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.*, 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

6. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that dismissal of this application for failure to comply with the Division's requests for information was proper, reconsideration of that action is not warranted, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Home/Systems Joint Venture regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. §0.291, and is effective on its release date. *See* 47 C.F.R. §1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

STELLA A. PAPPAS File No. 11539-CM-P-83

Conditional Licensee of Multichannel
Mulitpoint Distribution Service
Station WLW943, Merced, California

ORDER ON RECONSIDERATION

Adopted: June 30, 1993; Released: July 12, 1993

By the Chief, Domestic Facilities Division:

1. *Introduction.* Stella A. Pappas (Pappas) seeks acceptance of a late-filed application for extension of time to construct the captioned station in the Multichannel Multipoint Distribution Service (MMDS) on the E-group channel in Merced, California. Upon a qualification review, Pappas was granted a conditional license on November 1, 1989, with an expiration date of November 1, 1990. The license instrument included the condition that "[t]his license shall be automatically forfeited . . . without further notice to the licensee if the facilities are not ready for operation upon the expiration date of the construction period specified herein. . .".

2. *Background.* Pappas did not construct her station by the November 1, 1990 expiration date of the conditional license. On November 23, 1990, Pappas filed an application for extension of time to construct (FCC Form 701), with an indication by her counsel that the late-filing of the application was due to "an inadvertent error in this office's follow-up system. . .". Exhibit 1 of the extension of time application included Pappas' showing of good cause for an extension of time to construct. Pappas states that she was, after receipt of the construction permit, approached by several parties who were interested in negotiating for the purchase of her conditional license. Because those purchasers were unable to consummate an agreement, Pappas indicates, construction of her station was delayed. A new prospective purchaser was negotiating with Pappas for the sale of her station at the time the extension application was filed, and upon the successful conclusion of those negotiations, Pappas intended to begin construction of the authorized facilities.

3. *Discussion.* We are presented with two issues for resolution: first, whether Pappas has forfeited her conditional license, and if so, whether reinstatement is justified, and second, if the license is reinstated, whether the requested extension is justified. Based on the following, we find that Pappas has forfeited her conditional license and has not met the criteria for reinstatement, and therefore the extension application is denied.

4. Section 319(b) of the Communications Act of 1934, as amended, provides, *inter alia,* that a construction authorization will be automatically forfeited if the station is not ready for operation within the time specified in the construction authorization, or such further time as the Commission may allow, unless prevented by causes not under the control of the grantee. 47 U.S.C. §319(b), *see also* 47 C.F.R. §§21.43, 21.44. Carriers who fail promptly to construct facilities preclude other applicants who are willing, ready, and able to construct from access to limited and valuable spectrum. *Revision of Part 21 of the Commission's Rules,* 2 FCC Rcd 5713 (1987). In order to ensure timely construction of facilities, the Commission announced its intent to enforce strictly construction deadlines for stations authorized under Part 21 of the Commission's Rules when it established a construction period of 12 months for MMDS in 1987. *Id.*

5. Under Part 21 of the Commission's rules, conditional licensees must complete construction by the date which is specified in the construction authorization as the termination date of the construction period. *See* 47 C.F.R. §21.43(a). The rules explicitly state that failure to construct within a specified construction period and to file a certification of construction completion, no later that 5 days after construction is completed, will result in the automatic forfeiture and termination of the station authorization. 47 C.F.R. §21.44(a)(1). An applicant takes a construction authorization subject to compliance with the terms and conditions of the authorization, including the requirements of rule sections 21.43(a) and 21.44(a)(1). Acceptance of the construction authorization constitutes accession to these conditions. *Cf. P.R. Temmer v. FCC,* 743 F.2d 918 (D.C. Cir. 1984). Pappas has, by her own admission, made no effort to construct her station. Exhibit 1, Form 701, *supra.* She has advanced no support for, nor indeed has she requested, reinstatement of her conditional license. Instead, her comments are restricted solely to why construction has not occurred.[1]

6. By failing to construct her station, Pappas has caused her conditional license to be automatically forfeited. Compliance with Section 21.44 was a condition under which Pappas took the construction authorization. The consequence of failing to comply with this condition of authorization -- automatic forfeiture of the authorization -- is clearly set forth in that rule section. Moreover, this consequence was printed on the license document. Pappas had full knowledge of the condition and the consequence of failing to satisfy the condition. Pappas failed to meet the condition, therefore, the license is automatically forfeited.

[1] Even if Pappas had filed her application for an extension of time in a timely manner, we could not find that it meets the requirements for grant. Section 21.40(b) of the Commission's Rules, 47 C.F.R. §21.40(b), requires that an application for extension of a construction authorization must demonstrate that the licensee has made diligent efforts to construct *and* that (1) additional time is due to circumstances beyond that applicant's control, or (2) there are unique and overriding public interest concerns that justify such an extension. The rule section expressly provides that extensions will not be granted for delays caused by lack of financing or lack of site availability. Requests for additional time to construct are not routinely granted, and are treated on a case-by-case basis. Revision of Part 21 of the Commission's Rules, *supra,* at 5721-5722. Pappas has demonstrated that she made no effort to construct the station, and hence, cannot meet the threshold requirement of due diligence.

7. Under Section 21.44(b) of the Commission's Rules, a forfeited license may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience, and necessity. Petitions for reinstatement will be considered if the petition, *inter alia*, "(2) explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and (3) sets forth with specificity the procedures which have been established to insure timely filings in the future." As a threshold matter, Pappas has not requested reinstatement of her license, and although her counsel indicated the late filing was due to faulty office procedures, Pappas has not indicated what procedures she has established to insure timely filings in the future. Accordingly, we cannot conclude that reinstatement of the authorization is in the public interest.

8. *Conclusion.* Based on these considerations, we find that the captioned conditional license has been forfeited, and that the application for extension of time must be returned. Accordingly, IT IS HEREBY ORDERED that the application for acceptance of late-filed Form 701 IS RETURNED. This order is issued pursuant to 47 C.F.R. §0.291, and is effective on its release date. *See* 47 C.F.R. §1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

Maxcell Telecom Plus, Inc. — File No. 7727-CM-P-83

For Authority to Construct
and Operate Multichannel Multipoint
Distribution Service station on the
F-group channels at Tulsa, Oklahoma

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 1993; Released: July 12, 1993

By the Chief, Domestic Facilities Division:

1. *Introduction.* Before the Division is the above-referenced application of Maxcell Telecom Plus, Inc. (Maxcell) to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the F-group channels at Tulsa, Oklahoma. As the result of a Commission lottery held on February 26, 1993, the above-referenced MMDS application was selected for qualification review. B.F. Investments, Inc. (B.F.) filed a post-lottery Petition to Deny, challenging Maxcell's application. No reply has been filed.

2. *Petition to Deny.* On January 15, 1993, the Commission released Lottery Notice, Report No. MMDSL-47, which listed the MMDS applications to be included in the February 26, 1993 lottery. This list also identified the service area, channel group, and preference group, if appropriate, for each MMDS application.[1] Petitioner claims that Maxcell holds licenses for two MMDS facilities, and therefore, was not eligible for the "B" preference that was indicated in the January 15, 1993 Lottery Notice.[2] As a result, Petitioner contends that Maxcell benefitted from a preference it did not deserve.[3] Therefore, B.F. requests that the above-referenced application be dismissed.

3. *Discussion.* Section 309(d) of the Communications Act, 47 U.S.C. § 309(d)(1) provides that a petition to deny must "set forth specific allegations of fact sufficient to show... that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity." 47 U.S.C. § 309(d)(1). If the Commission determines that a *prima facie* case has been made, then and only then, must the Commission take the second step and determine whether a substantial and material question of fact has been presented. 47 U.S.C. §§ 309(2)(2) and (e). If the Commission finds that no substantial or material question of fact has been presented, no evidentiary hearing need be held. 47 U.S.C. § 309(d)(2). *See, e.g., Astroline Com. Co. Ltd. Partnership v. FCC,* 857 F.2d 1556, 1561 (D.C. Cir. 1988); *Gencom, Inc. v. FCC,* 832 F.2d 171, 180-181 (D.C. Cir. 1987); *Citizens for Jazz on WRVR, Inc. v. FCC,* 775 F.2d 392, 394 (D.C. Cir. 1985).

4. The Commission's *prima facie* inquiry is limited to consideration of the allegations in the petition to deny and any supporting affidavits. In addition, there is the assumption that the specific facts set forth by the petitioner are true. *Id.* In the instant case, a review of the specific allegations of fact, taken as true, would sufficiently establish that the grant of the subject application would be *prima facie* inconsistent with the public interest, convenience and necessity. Proof that the above-referenced applicant filed an incorrect certification of preference would alter the Commission's public interest determination. *See* Section 21.32.

5. Having found that the petition comports with the requirements of Section 309(d)(1), we now must determine whether a substantial and material question of fact has been raised by Petitioner.[4] In making this determination, the Commission must consider the totality of the evidence presented (*i.e.,* the evidence offered in rebuttal, the applications and other matters the Commission may officially notice, as well as the petitioners' evidence). *Astroline,* 858 F.2d at 1561; *Gencom,* 832 F.2d at 181; *Jazz,* 775 F.2d at 394. The evidence before us is sufficient to make an informed and reasoned decision on the merits of Petitioner's allegations without engaging in a further fact-finding process. The material facts underlying the asserted violations in this case are clear. In short, we find that Petitioner has not raised any substantial and material questions of fact.

6. Section 309 (i)(3)(A) of the Communications Act, 47 U.S.C. § 309(i)(3)(A), requires that:

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[1] In conducting a lottery, Section 309(i) of the Communications Act of 934, 47 U.S.C. § 309(i) requires that minority and diversity preferences be awarded to eligible applicants to encourage diversity in the ownership of mass communications. An applicant awarded a preference(s) will have a greater probability of winning the lottery than an applicant lacking them. Preferences are computed by the Commission, in the manner described in Section 1.1623.

[2] Pursuant to Sections 1.1621, 1.1622, and 1.1623, preferences may be awarded as follows:

Group A-Full Diversity, where the applicant certifies that it and/or its owners have no interest in any media of mass communications. Also, Minority Group.

Group B-Full Diversity, where the applicant certifies that it and/or its owners have no interest in any media of mass communications.

Group C-Partial Diversity, where the applicant certifies that it and/or its owners have no interest in more than three mass communications media facilities. Also, Minority Group.

Group D-Partial Diversity, where the applicant certifies that it and/or its owners have no interest in more than three mass communications media facilities.

Group E-No Diversity and Minority Group.

Group F-No Diversity.

[3] A "B" preference was listed in the January 15, 1993 Lottery Notice for Maxcell Telecom Plus, Inc. (File No. 7727-CM-P-83). As noted above, a "B" preference on a Certification of Preference (FCC Form 346), refers to an applicant which holds no interest in any media of mass communications.

[4] A "substantial" question for this purpose is a question which "arouses sufficient doubt on the point that further inquiry is called for." Jazz, 775 F.2d at 395.

> The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications...

See also, Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearing, 93 FCC 2d 952 (1983)(hereinafter cited as *Lottery Order).* In the *Lottery Order*, the Commission established rules to be used to award preferences in lotteries for media of mass communications. Among the rules adopted in the *Lottery Order* was the requirement that an applicant inform the Commission of changes in its preference status before commencement of a lottery. Applicants remain under a continuing obligation to make certain that the information on file is correct. *Lottery Order*, 93 FCC 2d at 973.

7. Our records reveal that Maxcell holds no conditional licenses for MMDS facilities. Contrary to Petitioner's assertion, Maxcell is not the licensee for the MMDS facilities at Baton Rouge, Louisiana (WHT707) or Reno, Nevada (WHT782).[5] Therefore, the "B" preference assigned to Maxcell in the lottery held on February 26, 1993 correctly reflected its holdings. *See* February 26, 1993 Final Revised Lottery List MMDSL-47.

8. *Conclusion and Ordering Clause.* Contrary to Petitioner's allegations, Maxcell's certification of preference correctly reflected its mass media holdings. Therefore, having carefully considered all of the pleadings and the evidence submitted, we find that the allegations raised by Petitioner, when read in conjunction with the remainder of the record, are insufficient to raise a substantial or material question of fact. Accordingly, IT IS ORDERED that the Petition to Deny filed by B.F. Investments, Inc. IS HEREBY DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. Petitions for reconsideration, pursuant to 47 C.F.R. Sec. 1.106, or applications for review, pursuant to 47 C.F.R. Sec. 1.115, may be filed within thirty (30) days of the date of public notice of this order. *See*, 47 C.F.R. Sec. 1.4(b).

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

[5] The license for WHT707 is held by William Erdman and Max Hugel. Erdman/Hugel MMDS Partnership holds the license for WHT782. Both entities are separate and apart from Maxcell Telecom Plus, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

National Wireless Cable — File No. 10960-CM-P-83

For Authority to Construct and Operate a Multichannel Multipoint Distribution Service station on the E-group channels at Cheyenne, Wyoming

ORDER ON RECONSIDERATION

Adopted: June 30, 1993; **Released: July 12, 1993**

By the Chief, Domestic Facilities Division:

1. *Introduction.* National Wireless Cable (National) filed a request asking that the Domestic Facilities Division set aside the dismissal of National's application for authority to construct and operate a Multichannel Multipoint Distribution Service (MMDS) station on the E-group channels at Cheyenne, Wyoming, and reinstate the application.

2. *Background.* As the result of a Commission lottery, the above-referenced application was selected for qualification review. Subsequently, Division staff initiated a qualification review of this application, pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the application was found to contain several deficiencies that precluded the staff from making a finding that National was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its application would serve the public interest. National was notified by letter of these deficiencies and provided an opportunity to cure them within thirty (30) days of the date of each letter.[1] National was advised in the deficiency letter that failure to file the requested information within thirty days could result in the dismissal of its application.

3. Pursuant to Section 21.13(c), 21.20(d) and 21.28(d) of the Rules, the Division dismissed, by letter, National's application for its failure to comply completely in a timely manner with the Division's request for information. While admitting that all of the requested information had not been submitted, National, on reconsideration states: "At the time the responses were initially due, [National] was not represented by counsel and was unable to devote sufficient time to the preparation of a response because of the press of other business." National's Letter at 2.

4. *Discussion.* As of the date of the Division's dismissal action, National still had not submitted all of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, National had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter site, as required by Sec. 21.15(a).[2] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[3] *Video/Multipoint, Inc.*, 6 FCC Rcd 5124, 5126 (Comm. Car. Bur. 1991).

5. Also, National failed to submit the information necessary for compliance with FCC and FAA regulations concerning avoidance of navigation hazards, as required by Secs. 17.4(f) and 21.15(d). *See also* 47 C.F.R. Sec. 21.15(c). In addition, National failed to comply with the request to submit the Section 21.902(i) ITFS interference analysis for its application. At the time of the dismissal, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing cochannel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific request that this analysis be submitted by a specified date, National failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988).

6. National had a duty to submit curative amendments to its application within thirty days of the Division's written request, or to obtain an extension of time.[4] *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm. Car. Bur. 1990). It failure to submit curative amendments for more than six (6) months substantially impeded the expedious offering of MMDS at Cheyenne. Also, National's failure to respond in a timely

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[1] The deficiencies cited were the absence of: (1) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a); (2) antenna structure height information for Federal Aviation Administration (FAA) air navigation hazard program compliance, as required by 47 C.F.R. Secs. 17.4(f) and 21.15(d); (3) a programmer non-affiliation statement, as required by 47 C.F.R. Sec 21.900; and (4) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i).

[2] Even if National was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Section 21.13(c) to submit a lease or option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia,*: "In addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ...(2) As the Commission, at any time after the filing of an application... may require from any applicant ... to enable it to determine whether a radio authorization should be granted..."

[3] Revision of Part 21 of The Commission's Rules, 2 FCC Rcd 5713, 5721 (1987)(Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.)*

[4] National did request an extension of time to submit the necessary documents. However, the extension request was filed after the application had been dismissed.

manner to the Division's request for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West,* 60 Rad. Reg. 2d 8, 9 (1985). At the time of the dismissal, National had not provided the required ITFS interference analysis, the required FAA information, and the required lease or lease option agreement. The Division was not in a position, therefore, to complete evaluation of National's MMDS station proposal and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.,* 5 FCC Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of National's application for failure to comply with the Division's requests for information was proper, and reinstatement of the application is not justified. Accordingly, IT IS ORDERED that the petition seeking a set-aside of our dismissal action is not warranted, and the reinstatement filed by National Wireless Cable regarding the above-referenced MMDS application IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-159

In the Matter of

Amendment of the Commission's
Rules To Permit FM Channel and Class
Modifications by Application.

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 4, 1993; Released: July 13, 1993

By the Commission:

1. By this *Report and Order*, the Commission modifies its rules to permit licensees and permittees to request by application upgrades on adjacent and co-channels,[1] modifications to adjacent channels of the same class, and downgrades to adjacent channels.[2] Licensees and permittees currently must request these changes through a two-step process in which the party first files a petition for rule making and, if the petition is granted, then an application. We will eliminate the rule making step in circumstances where it largely duplicates the application process, and instead allow a licensee or permittee to seek such modification by application alone.

BACKGROUND

2. *Existing Processes.* As we explained in the *Notice of Proposed Rule Making* in this proceeding, 7 FCC Rcd 4943 (1992) (*"Notice"*), an FM licensee or permittee seeking an upgrade on an adjacent or co-channel, a modification to an adjacent channel of the same class or a downgrade to an adjacent channel first must file a petition for rule making to amend the FM Table of Allotments.[3] The petition is analyzed to determine whether it will meet our technical requirements, including minimum distance separation[4] and city grade coverage.[5] If this analysis indicates that the proposed channel could be allotted, the Commission issues a *Notice of Proposed Rule Making* (*"NPRM"*) seeking comment on the allotment and designating dates by which comments and reply comments must be filed. Parties may file counterproposals during the comment period suggesting alternate, mutually exclusive uses of the spectrum in other communities. If the Commission determines that grant of the proposal is in the public interest, it issues a *Report and Order* modifying the license or permit to specify the new channel, amending the Table of Allotments and requiring the petitioner to file, within ninety days of the effective date of the *Report and Order*, a minor change construction permit application specifying the modification. The petitioner is also required to file any required fees with the minor change application.

3. Once the minor change construction permit application is received, a tenderability review is performed in which the application is examined for completeness. The application is then placed on a *Public Notice of Tenderability/Acceptability*. The application undergoes an engineering analysis to verify compliance with the Commission's Rules regarding minimum distance separation, city grade coverage, and station class requirements with respect to tower height and operating power. The proposed transmitter site is also checked for compliance with requirements regarding environmental concerns, and for requirements regarding tower height and proximity to airports. If the application complies with all relevant requirements, a construction permit is issued.

4. A licensee or permittee usually will specify the same site in both the petition for rule making and in the application. In such instances, the engineering analysis for the application is generally duplicative of the analysis performed on the rule making petition. In those instances where the applicant specifies a different site than proposed in the rule making proceeding, it does so generally because in developing the more comprehensive technical proposal required by an application, it found its earlier proposed site unsuitable. As part of its more detailed showing, an applicant also may employ the contour protection provisions of Section 73.215 of the Rules to propose facilities that would otherwise be short-spaced to existing stations.[6]

5. *Proposed Rule Changes.* The *Notice* suggested that the comprehensive engineering analysis performed with respect to applications for adjacent and co-channel upgrades, modifications to adjacent channels of the same class, and downgrades to adjacent channels subsumes the analysis performed at the rule making stage. This unnecessary duplication of effort may impose unnecessary costs and delays on the stations seeking modifications and an unwarranted burden on the Commission's resources. Accordingly, the *Notice* proposed to eliminate this duplication by permitting these modifications by application, rather than by rule making.

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[1] Adjacent channels include the three channels above and the three channels below the specified channel. A co-channel is the channel occupied under the licensee's or permittee's existing authorization. Pursuant to Section 1.420(g)(3) of the Commission's Rules, for instance, a licensee operating on Channel 250A may seek a channel upgrade on Channels 247, 248, 249, 251, 252, or 253, or on its existing channel.

[2] Pursuant to Section 73.3573, a licensee or permittee currently may request a co-channel downgrade by application. *See Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989).

[3] *See* 47 C.F.R. Section 1.420.

[4] 47 C.F.R. Section 73.207; *See Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990) *rev. denied sub nom. Chester County Broadcasting Co. v. FCC, Case No. 90-1496, (D.C. Cir. June 6, 1991)*.

[5] 47 C.F.R. Section 73.315(a); *see, e.g., Greenwood, South Carolina*, 3 FCC Rcd 4108 (1988), *corrected*, 3 FCC Rcd 4374 (1988).

[6] *See Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas ("Contour Protection Report and Order")*, 4 FCC Rcd 1681 (1989).

6. We tentatively concluded that it may be desirable to limit this one-step process in order to avoid harming core allotment policy objectives. We noted that there are some types of showings that are considered acceptable in connection with applications, such as contour protection showings pursuant to Section 73.215 of the Rules and showings of "substantial compliance" with our city grade coverage requirements, that we have expressly declined to consider in connection with allotment proceedings.[7] In order to prevent the allotment of channels that would conflict with our present allotment standards, we proposed to limit the availability of the new one-step procedure only to those proposals that comply with both our application criteria and our allotment standards. We suggested that this could be achieved in two ways. We could require that any application filed pursuant to the new procedure meet minimum distance separation and city grade standards as applied in the allotment context, without making use of less restrictive application standards such as contour protection or substantial compliance, at the site specified in the application. Alternatively, we could allow an applicant to apply for a station modification at a site that would not meet allotment standards, so long as the applicant can demonstrate that an available site exists which would comply with allotment standards.

7. The *Notice* also proposed to limit this procedure to modifications that require no changes to the Table of Allotments other than a change in the allotment of the station seeking the modification.[8] We also tentatively concluded that the procedure should not be extended to apply to non-adjacent channel upgrades, which are generally subject to competing expressions of interest.[9]

8. We proposed that the cut-off rule recently adopted by the Commission whereby minor change applications are cut off from the filing of mutually exclusive petitions for rule making as of the day the applications are received at the Commission[10] should apply with respect to any application filed pursuant to this new procedure. We tentatively concluded that the *Ashbacker* doctrine[11] does not preclude adoption of the proposed changes. Finally, we proposed that any changes adopted in this proceeding apply only to applications filed after the effective date of the rules.

9. *Overview of Comments.* The nine parties filing comments or reply comments in response to the *Notice* generally agree that adoption of a one-step upgrade process would be in the public interest.[12] NAB, Radio South, Bromo, Fuss and Reynolds maintain that a one-step upgrade process would expedite expanded radio service. Parties addressed most of the issues raised in the *Notice*, including how best to protect core allotment policy objectives, whether the one-step process should be extended to cover non-adjacent channel upgrades and proposals that require other changes to the Table of Allotments, and the effective date of the new rules. NAB and Bromo agreed with our proposal that the cut-off rule governing minor change applications should apply with respect to any application filed pursuant to the new procedure, while Reynolds questioned whether such an approach should be adopted.[13] No party addressed the *Ashbacker* issue.[14] [15]

DISCUSSION

10. After careful consideration of the comments filed in this proceeding, we conclude that adoption of a one-step upgrade procedure is warranted. We believe that using a one-step process through the filing of a minor change construction permit application for adjacent and co-channel upgrades, same class adjacent channel substitutions, and adjacent channel downgrades will serve the public interest by speeding the implementation of service modifications and eliminating redundant processing.[16] We also believe that each of these actions has inherent public benefit. Upgrades generally provide enhanced service to the public. Adjacent channel downgrades provide flexibility to use allotments that may have become unusable due to recently adopted enhanced spacing requirements.[17] Same class adja-

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[7] In adopting rules allowing short spacing through the use of contour protection, we expressly declined to allow the use of contour protection at the allotment stage. *See Contour Protection Report and Order*, 4 FCC Rcd 1681 (1989). With respect to city grade coverage, *compare Southwest Communications, Inc.*, released July 16, 1986 (letter from Chief, FM Branch) (application standard of 80% coverage considered "substantial compliance" pursuant to city grade coverage requirement of Section 73.315 of the Rules) *with Greenwood, South Carolina*, 3 FCC Rcd 4108 (1988), *corrected*, 3 FCC Rcd 4374 (1988) (allotment standard requires 100% city grade coverage pursuant to Section 73.315 of the Rules).

[8] For example, a licensee on Channel 250A at Community X may wish to upgrade to Channel 250C3, which is mutually exclusive with Channel 250A at Community Y. In its petition for rule making, the licensee at Community X could request that an alternate channel be allotted to the licensee at Community Y. If the licensee at Community Y did not agree in advance to the substitution, we would issue an *Order to Show Cause* why it should not be required to change channels.

[9] *See* 47 C.F.R. 1.420(g)(1) and (2).

[10] *See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *pet. for recon. granted in part*, FCC 93-339, adopted June 28, 1993 ("*Conflicts*").

[11] *Ashbacker v. U.S.*, 326 U.S. 327 (1945).

[12] Appendix C lists parties filing comments and reply comments.

[13] Reynolds filed comments in this proceeding and in response to a petition for reconsideration filed against *Conflicts*. We stated in the resolution of that proceeding that his concerns are more appropriately considered herein. *See Conflicts (Memorandum Opinion and Order)*, FCC 93-339, adopted June 28, 1993, n.7.

[14] As requested in a petition for rule making (RM-7933) filed on February 10, 1992, NAB also urges the Commission to initiate a comprehensive review of FM allotment policies. These matters are not properly before us in this proceeding and will be addressed separately. Similarly, Reynolds's comments suggesting that we make substantive changes in our FM allotment policies are beyond the scope of this proceeding.

[15] NAB, Radio South, North Jefferson, Reynolds and Morris refer in their respective comments to ongoing allotment proceedings. We do not believe it is proper or necessary to examine the facts of these proceedings in the context of this generic rule making proceeding. Therefore, comments will not be considered to the extent that they specifically reference ongoing proceedings.

[16] Under this procedure, any notification to the Canadian or Mexican governments would be made after the application is filed.

[17] *See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A Stations*, 6 FCC Rcd 3417 (1991), *affirming Second Report and Order*, 4 FCC Rcd 6375 (1989) (establishing 6 kW limit for Class A FM stations),

cent channel substitutions will enable some Class A licensees and permittees presently limited to three kilowatts to increase power to six kilowatts. Allowing parties to request these modifications in a one-step process will eliminate the unnecessary duplication of effort involved in performing a comprehensive engineering analysis at each stage, which imposes unnecessary costs on both the stations seeking modifications and the Commission's resources.[18]

11. *Protection of Core Allotment Policy Objectives.* Six parties addressed our suggestion that the one-step upgrade process should be limited in order to avoid harming core allotment policy objectives. NAB and Skidelsky argue that any application filed pursuant to the one-step process should meet both application criteria and our allotment standards. NAB notes that this restriction would prevent applicants from relying on contour protection or substantial compliance with city-grade coverage rules. Skidelsky claims that the Commission would be free to grant waiver requests if an upgrading station initially demonstrated, for instance, full city grade coverage, but then determined that it could no longer obtain a transmitter site to provide such coverage.

12. Four parties argued that applicants under the one-step process should be able to specify sites that are in compliance with the application criteria but not necessarily the allotment standards. Bromo maintains that such an approach would permit upgrades while considering "real world" problems such as Federal Aviation Administration clearance and zoning problems. Reynolds argues that permitting the use of contour protection in the one-step process could provide additional reception service to areas that otherwise would be unable to meet the allotment standards. Southern Starr claims that the use of actual sites, rather than theoretical sites specified in order to comply with allotment standards, may permit the Commission to grant additional proposals that would have been foreclosed due to unavailability of acceptable theoretical sites. Furthermore, Southern Starr argues that the specification of actual sites would lead to more accurate reception area gain and loss analyses, when required by the Commission.

13. We conclude that it is in the public interest to preserve the benefits of the current system by preventing the allotment of channels that would not meet our present allotment standards. The preservation of those allotment standards is necessary to prevent overcrowding and to promote a more even distribution of stations. We also conclude, however, that applicants should be permitted to apply for a station modification under the one-step process at a site which complies with all application criteria, even if that site would not meet allotment standards. Our current rules allow such a result, and to deny the use of the one-step process to applicants who can demonstrate compliance with the allotment standard, but apply for a site acceptable pursuant to the application criteria, would therefore be inconsistent with current practice. However, since it would be contrary to sound allotment policy for parties to receive modifications by using the one-step process that would be denied under the two-step process, all applicants using the one-step process must also demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation and city-grade coverage.[19] Our actions herein do not expand the use of contour protection in any way, but merely follow our established practice. Furthermore, we emphasize that we do not intend that contour protection be used as an allotment tool. *See Contour Protection Report and Order,* 4 FCC Rcd 1681 (1989).[20]

14. In this regard, we wish to make our intentions abundantly clear. Where a station seeks a modification using the one-step process, and is unable to demonstrate that a suitable site exists that would meet allotment standards for the station's channel and class, that application would be dismissed, even if the facilities which the applicant intends to build would otherwise comply fully with Commission standards.[21] For example, if X seeks to upgrade its station from

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First Report and Order, 4 FCC Rcd 2792 (1989) (establishing Class C3 FM stations); *Review of Technical Parameters for FM Allocation Rules of Part 73 Subpart B, FM Broadcast Stations,* 4 FCC Rcd 3557 (1989) (establishing IF separations).

[18] As we stated in the *Notice,* grant of the application will be followed by an amendment to the FM Table of Allotments. Such amendments will be treated as minor and non-controversial as they simply reflect authorized station operations. Thus, there is good cause for proceeding without notice and comment and for making the rule change effective upon publication in the Federal Register. *See* 5 U.S.C. Section 553 (b)(B)(d). No commenter addressed this issue.

[19] In making this showing, an applicant must include a separate exhibit to the application which shows that the allotment reference site would meet allotment standards with respect to spacing and city grade coverage and that it would be suitable for tower construction. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Generally speaking, examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation. Consistent with existing allotment standards, the applicant is not required to submit a certification of site availability concerning the allotment reference site.

[20] We also wish to provide practitioners with some guidance as to the manner in which the staff intends to implement these changes, especially with respect to the FM Engineering Data Base. We caution practitioners, however, that the FM Engineering Data Base continues to be an unofficial information source, and this guidance is in no way intended to limit the ability of the staff to alter, as needed, the manner in which it administers the data base. It is currently the staff's practice to make two entries in the FM Engineering Data Base when a party seeks an upgrade. One entry reflects the "allotment" of a higher class channel, and is commonly referred to as the "vacant allotment" entry. The vacant allotment entry sets forth a station's upgraded channel and class, and includes a set of geographic coordinates commonly referred to as the "allotment reference coordinates." The other entry, commonly referred to as the "minor mod" entry, includes the channel, class, and geographic coordinates specified in the application for a construction permit to implement the upgrade. (Once the application is granted, the minor mod entry changes from an "application" entry to a "construction permit" entry, and the "vacant allotment" entry changes to a "used allotment" entry.) It is the staff's present intention to make both an allotment and a minor mod entry in connection with applications filed pursuant to the one-step process. The allotment reference coordinates will either be the same as those specified in the application, or in the event the applicant submits the exhibit detailed in Note 19, the coordinates specified in the exhibit.

[21] One-step applicants which fail to specify reference coordinates for a suitable site that meets the allotment standards for the proposed channel and class will be afforded the opportunity to submit a curative amendment pursuant to 47 C.F.R. Section 73.3522(a)(6).

Class A to Class C3, but the site which X specified fails to provide "city-grade" service to its community of license *and* meet the minimum distance separation requirements of Section 73.207 of the Rules, X's application, unless amended to cure this defect, will be dismissed.[22] This would be true even if X could submit an application pursuant to Section 73.215 of the Rules which would otherwise comply with our rules. It was never our intention in adopting the contour protection methods of Section 73.215 of the Rules to allow unlimited use of its provisions. Instead, we sought to provide stations with some flexibility to respond to real world problems, an especially important consideration in light of the increasing congestion in the FM band. It was not our intention in that proceeding, nor is it our intention in this proceeding, to provide a means for exacerbating that congestion. Therefore, we believe that the limits we impose on the use of the one-step process are necessary to preserve our core allotment policies, and we would not adopt the new process in the absence of these or similar limits.

15. *Cut-off Rule.* Consistent with the cut-off standard adopted in *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *pet. for recon. granted in part*, FCC 93-339, adopted June 28, 1993 (*"Conflicts"*), minor change applications filed under this new process will be cut off from the filing of other applications[23] or rule making proposals as of the day they are received at the Commission. Bromo and NAB support such an approach. We concluded in *Conflicts* that the delays caused to applicants by unlimited exposure to potentially conflicting rule making petitions are undesirable. Applying cut-off procedures consistent with those established in *Conflicts* will provide certainty to applicants in terms of exposure to conflicting proposals. Moreover, this approach is consistent with our continuing efforts to encourage FM licensees to seek to improve service to the public by removing the risk to their existing authorizations where doing so does not unfairly prejudice new applicants.[24] Reynolds expresses concern that this approach would provide one-step applicants with an unfair advantage over parties that must use the rule making process to obtain upgrades. He fears that providing such cut-off protection could preclude consideration of a petition proposing an upgrade that offers superior public interest benefits to the upgrade proposed in the application. We disagree that "one-step" applicants have any advantage (unfair or otherwise) over petitioners for rule making. Rather, the process is designed to favor the party that is most prompt in submitting its request to the Commission. To the extent that this new procedure may foreclose any potential petitioner's opportunity to request a modification, we believe that it is balanced by the certainty and protection from exposure to conflicting requests that the new procedure would provide. Furthermore, a prospective petitioner will be able to predict whether a particular station has the potential to seek a modification by application, thereby enabling the petitioner to file a conflicting request in advance of that application. Prediction is possible because this new procedure will be limited to only those modification requests which show that a site exists which meets the requirements of a rule making proposal. Moreover, the operation of stations on adjacent and co-channels in neighboring communities, in conjunction with our minimum distance separation and city grade coverage requirements, necessarily limit the maximum power, maximum height and location that a licensee or permittee could request in its application, and provide the ability to predict with certainty any preclusive effect that a potential modification may have on FM spectrum availability in the area.

16. Although adoption of the cut-off rule established in *Conflicts* will in some instances remove the ability of parties to file counterproposals seeking conflicting uses of the spectrum,[25] we conclude that the *Ashbacker* doctrine[26] does not preclude adoption of the changes contemplated herein.

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[22] We note that applicants submitting the showing detailed in Note 19 will be considered mutually exclusive with any earlier filed rule making petition or application if the allotment reference or minor mod coordinates do not meet spacing requirements to the rule making petition or application. Thus, if X submits the exhibit outlined in Note 19, *supra*, and the site specified in that exhibit does not meet the spacing requirements of Section 73.207 with respect to an earlier filed rule making petition filed by Y, X and Y's proposals will be considered mutually exclusive, even if the minor mod application otherwise would not present a conflict with the rule making proposal because the application meets the requirements of Section 73.215 of the Rules. Under these circumstances, X and Y's proposals would generally be considered on their merits in the context of the rule making proceeding, as described more fully in paragraphs 17 and 18, *infra*, to determine which would best serve the public interest. Furthermore, if X's allotment reference site or its application site conflicts with a minor mod application filed earlier by Z, X's application will be held in abeyance until such time as final action is taken on Z's application. In the event Z's application is granted, X is given one opportunity to amend to remove the conflict with Z's application; in the event Z's application is dismissed or denied, X's application is then considered.

[23] One-step applications that are in conflict with previously filed one-step applications cut-off under this procedure will be held in a queue until disposal of the lead application. *See Amendment of Part 73 of the Commission's Rules to Modify the Commission's Procedures for Commercial FM Broadcast Applications*, 6 FCC Rcd 7265 (1992).

[24] *See Amendment of the Commission's Rules Regarding the Modification of FM and Television Station Licenses*, 56 RR 2d 1253 (1984); *Modification of FM and TV Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 60 RR 2d 114 (1986); *see also Change of Community Report and Order*, 4 FCC Rcd 4870 (1989) *recon. denied*, 5 FCC Rcd 7094 (1990).

[25] For example, X files a petition for rule making and the Commission issues a *Notice of Proposed Rule Making* inviting comment on the proposal. Before the end of that comment period, Y files an application that conflicts with X's proposal. These conflicting proposals would be mutually exclusive, and treated in accordance with the procedure set forth in paragraphs 17 and 18, *infra*. After Y files but before the comment deadline, Z files a counterproposal which conflicts with both X's proposal and Y's application. Z's counterproposal is precluded by Y's application. In the *Conflicts* reconsideration *Memorandum Opinion and Order*, we explicitly recognize that this is a possible outcome of the cut-off rule. *See Conflicts*, FCC 93-339, adopted June 28, 1993. As we state in *Conflicts*, potential petitioners can file their proposals at any time, and need not wait until a proceeding is initiated, or once initiated, until the end of a comment period to file their proposals. Establishing these procedures is necessary to the Commission's orderly processes. However, as stated in *Conflicts*, a counterproposal that is timely filed in response to an *NPRM* but cut off by the filing of an intervening application will be considered in the rule making proceeding if the affected counterproponent files a timely amendment that protects the applicant's site.

[26] *Ashbacker v. U.S.*, 326 U.S. 327 (1945).

In *Ashbacker*, the United States Supreme Court held that where two *bona fide* applications are mutually exclusive, the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give it. However, the Court has noted that the Commission can promulgate rules limiting eligibility to apply for a channel when such action promotes the public interest, convenience and necessity.[27] We believe the changes proposed herein would serve the public interest because enhanced service to the public would be expedited. Furthermore, in *Reuters Ltd. v. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986), the Court of Appeals noted that *Ashbacker* applies only to parties who are applicants, and not to prospective applicants. A party seeking to amend the FM Table of Allotments is a "prospective applicant" until its application is submitted and accepted pursuant to the Commission's Rules.[28]

17. *Conflicts Between Applications Filed Pursuant to the One Step Procedure and Earlier or Simultaneously Filed Allotment Petitions.* In adopting a cut-off rule for minor modification applications *vis a vis* allotment rule making petitions, we indicated that:

> if a rule making petition is filed prior to or on the same date as a conflicting FM application, they will both be considered timely filed and treated under our existing substantive policy for resolving conflicts between applications and rule making petitions.

Conflicts, n.18. Briefly stated, the substantive policy is that an application is considered, in the absence of a showing to the contrary, to represent no more than the applicant's preference for a particular transmitter site. Accommodation of an applicant's preference provides minimal public interest benefits, and thus virtually any conflicting proposal involving a net public interest benefit will be preferred. We see no reason to depart from this general approach with respect to conflicts between minor modification applications filed pursuant to the one-step process and earlier or simultaneously filed allotment petitions. However, our discussion of this issue in *Conflicts* did not address in any detail the treatment of conflicts between minor modification applications and rule making petitions. In particular, we did not address in *Conflicts* the actions an applicant must take to argue the comparative merits of its proposal with respect to a timely rule making petition. We are particularly concerned that applicants not view our cut-off rule or our one-step process as obviating the need to prosecute their proposal in the rule making context, should that be necessary because of a simultaneously or earlier filed allotment rule making petition. Nor do we wish the one-step process to become a means of circumventing the rule making process, if the proposal in the application conflicts with such a rule making petition. Therefore, we believe petitioners and applicants can benefit from some elaboration of these matters.

18. Generally, applications that conflict with earlier or simultaneously filed rule making petitions will be held in abeyance, and will not be granted unless the conflict is resolved. Unless the applicant amends its application so as to remove the conflict, the conflict will be resolved in the context of the rule making proceeding.[29] Furthermore, applicants using the one-step process to file an application in conflict with an earlier filed petition should file the application prior to the deadline established for filing counterproposals to the petition.[30] Applications filed prior to this deadline will be treated as if they were counterproposals, and will be listed on the Public Notice routinely issued by the staff to provide an additional opportunity to comment concerning such counterproposals. Applications filed after this deadline will, consistent with existing practice, be presumed to represent no more than an applicant's preference for a particular site.[31]

19. *Limit to Co-Channel and Adjacent Channel Upgrades, and to Modifications Requiring No Other Changes to the Table.* NAB was the sole commenter to support the proposal in the *Notice* to limit modifications under the one-step process to co-channel and adjacent channel upgrades and to those that require no other changes in the Table of Allotments, arguing that modifications that could affect other parties should be examined and governed by the full allotment rule making process. Radio South, Bromo, Fuss and Reynolds argue that the procedure should also apply to nonadjacent channel upgrades. Bromo, Fuss and Reynolds claim that a licensee or permittee seeking a nonadjacent upgrade could demonstrate the availability of an additional, equivalent class channel in conjunction with its application, and expressions of interest in the channel could be solicited in the Public Notice announcing the filing of the application. If an expression of interest is received, the Commission could then issue a *Notice of Proposed Rule Making* seeking comment on the allotment. Bromo and Reynolds propose that the one-step process should also apply to changes in community of license, claiming that the equities of a change in community proposal can be weighed in the application process.[32] Finally, Bromo proposes expanding the one-step process to include intermediate frequency ("IF") channels as well.[33] With respect to other changes to the Table of Allotments, Fuss and Reynolds believe that proposals requiring other modifications should be allowed if any station required to move to a different channel to accommodate the upgrade submits

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[27] *U.S. v. Storer*, 351 U.S. 192 (1956).

[28] *See also Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 1551, 1561 (D.C. Cir. 1987) ("only by compliance with such procedures may an application enter the ranks of *bona fide* applications' protected by *Ashbacker*"). The Commission employed a similar analysis in adopting Section 1.420(i) of its Rules, which permits FM and television licensees and permittees to seek a change in community of license without facing competing applications. *See* 4 FCC Rcd 4870, 4873 (1989).

[29] In the event the application does not prevail in the rule making proceeding, in order to protect its interests, the applicant must file a timely petition for reconsideration or application for review of the rule making determination.

[30] This deadline is established by a *Notice of Proposed Rule Making*. In addition, we encourage applicants who are aware of possible conflicts to file timely comments in the rule making proceeding.

[31] Because any showing to the contrary would constitute late-filed comments in the rule making proceeding, it would not, absent extraordinary and compelling circumstances, be considered sufficient to alter this presumption.

[32] *See* 47 C.F.R. Section 1.420(i).

[33] An IF channel is one that is 53 or 54 channels removed from another channel. For instance, the IF channels with respect to Channel 230 are Channels 283 and 284.

an agreement to do so in conjunction with the application, thereby avoiding issuance of a *Show Cause Order*. Reynolds argues that permitting such upgrades by application will avoid the delay that can result in processing the upgrade request due to the filing of potentially abusive counterproposals.

20. We will generally limit this new process to adjacent and co-channel upgrades, adjacent and co-channel equivalent channel changes, and adjacent channel downgrades as proposed in the *Notice*, with one variation. As suggested by Bromo, we will apply the one-step process to mutually exclusive IF channels consistent with the Commission's *Report and Order* amending Section 1.420(g) which treated IF channels as adjacent channels for upgrade purposes. *See Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 60 RR 2d 114, 115, n.1 (1986). Contrary to the commenters' arguments, we do not believe that we should extend the new process to nonadjacent channel upgrades or equivalent channel substitutions, modifications requiring other changes in the Table of Allotments or requests for change of community of license. Although Bromo, Fuss and Reynolds have suggested methods by which the Commission could continue to solicit expressions of interest or allow channel substitutions with affected licensees' advance consent, we believe that it would be premature to implement the changes suggested at this time. We note that the types of actions these parties propose that we allow by a one-step procedure involve potentially much more significant changes in the preclusive effects of the allotments involved, since more than one station may be involved, and the scope of the proposal is not limited by the need to continue to provide principal community coverage to the station or stations' community of license. The greater the preclusive effects, the greater the potential impact on third parties. We also note that expanding the scope of the changes allowable under a one-step process could undermine, in some circumstances, the purpose underlying our rule against contingent applications.[34] Under these circumstances, and until such time as we have greater experience with a one-step process, we believe a more cautious approach is warranted.

21. *Other Matters*. Bromo argues that use of the one-step process should be mandatory in order to prevent "warehousing" of the spectrum by those who receive an upgrade but fail to file an application to specify operation on the higher class channel. We agree, and we will require use of the new procedure for eligible parties. Since any party seeking these modifications will be afforded the same opportunities under the one-step procedure that they currently receive under the two-step procedure, we see no reason that the use of this one-step procedure be optional.

22. *Effective Date*. Two commenters addressed our proposal that any changes adopted in this proceeding should apply only to proposals filed after the effective date of the rules. Fuss agrees, claiming that applying the rules to petitions for upgrades already on file will cause disruption and confusion in processing applications. Radio South disagrees, maintaining that the rules should apply to both pending and future proposals. Otherwise, argues Radio South, the benefits of the new process will be denied to licensees who have already filed petitions in order to obtain service upgrades as expeditiously as possible.

23. These changes will be effective 30 days after publication in the Federal Register. No petitioner will be required to dismiss its rule making petition and refile its request in the form of an application. However, a rule making petitioner who has submitted a proposal that, upon the effective date of the new rules, could be advanced in the form of an application, will be permitted to withdraw its rule making petition and resubmit its proposal in the form of an application. Parties choosing to withdraw their rule making proposals are cautioned, however, that in doing so they may adversely affect their position with respect to earlier filed petitions for rule making or earlier or simultaneously filed applications.[35] Generally, we believe that dismissing a pending rule making petition and refiling in the form of an application will only be a desirable course of action if there is no earlier or simultaneously filed rule making proposal pending.

ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, that pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 303, Part 73 of the Commission's Rules, 47 C.F.R. IS AMENDED as set forth in Appendix A, below.

25. IT IS FURTHER ORDERED, that the rules adopted herein will become effective 30 days after publication in the Federal Register.

26. Pursuant to the Regulatory Flexibility Act of 1980, the Final Regulatory Flexibility Analysis for this proceeding is attached as Appendix B.

27. IT IS FURTHER ORDERED, that MM Docket 92-159 IS TERMINATED.

28. For further information, contact Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[34] 47 C.F.R. Section 73.3517.

[35] For example, on day 1, X filed a rule making petition for a new station. On day 2, Y filed a conflicting petition for a station upgrade. The Commission issued an *NPRM*, and the comment date (the last date for filing counterproposals) passed on day 90. On day 120, the new one-step procedure becomes effective. On the same day, Y withdraws its rule making proposal, and refiles its proposal in the form of an application. Because Y's application was filed after the *NPRM*'s comment date, Y's application will be held in abeyance, and in the rulemaking proceeding will be considered a mere site preference, and X is thus virtually certain to prevail in the rule making proceeding. Similarly, if X filed a rule making petition for a station upgrade, and Z timely filed a counterproposal in the rule making proceeding, if X subsequently withdrew its rule making proposal, and refiles it in the form of an application, X's application will be held in abeyance, and in the rule making proceeding would not prevail over Z's counterproposal. *See* paragraph 18, *supra*.

APPENDIX A

Parts 1 and 73 of Title 47 of the Code of Federal Regulations are amended to read as follows:

Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. Sections 154 and 303.

2. Section 1.420 is amended by adding Note 1 following paragraph (g) and redesignating the Note following paragraph (h) as Note 2 to read as follows:

§1.420 Additional procedures in proceedings for amendment of the FM, TV or Air-Ground Table of Allotments.

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Note 1: In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. *See* Section 73.203(b) of this chapter.

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Part 73 - Radio Broadcast Services

3. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. Sections 154 and 303.

4. Section 73.203 is amended by revising paragraph (b) and adding a Note to read as follows:

§73.203 Availability of channels.

* * * * *

(b) Applications filed on a first come, first served basis may propose a lower or higher class adjacent, intermediate frequency or co-channel. Applications for the modification of an existing FM broadcast station may propose a lower or higher class adjacent, intermediate frequency or co-channel, or an same class adjacent channel. In these cases, the applicant need not file a petition for rule making to amend the Table of Allotments (Section 73.202(b)) to specify the modified channel class.

Note: Changes in channel and/or class by application are limited to modifications on first, second and third adjacent channels, intermediate frequency (IF) channels, and co-channels which require no other changes to the FM Table of Allotments. Applications requesting such modifications must meet either the minimum spacing requirements of Section 73.207 at the site specified in the application, without resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in Sections 73.213-215 or demonstrate by a separate exhibit attached to the application the existence of a suitable allotment site that fully complies with Sections 73.207 and 73.315, without resort to Sections 73.213-215.

5. Section 73.3573 is amended by revising paragraph (a)(1), redesignating Notes 1 and 2 as Notes 2 and 3 and adding new Note 1 to read as follows:

§73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (73.202 (b)). Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Applications filed on a first come, first served basis may propose a higher or lower class adjacent, intermediate frequency or co-channel in an application for a new FM broadcast station. A licensee or permittee may seek the higher or lower class adjacent, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m field strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of the application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of Sections 73.3580 and 1.1111 pertaining to major changes.

Note 1: Applications to modify the channel and/or class of an FM broadcast station to an adjacent channel, intermediate frequency (IF) channel, or co-channel shall not require any other amendments to the Table of Allotments. Such applications may resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in Sections 73.215 as long as the applicant shows by separate exhibit attached to the application the existence of an allotment reference site which meets the allotment standards, the minimum spacing requirements of Section 73.207 and the city grade coverage requirements of Section 73.315. This exhibit must include a site map or, in the alternative, a statement that the transmitter will be located on an existing tower. Examples of unsuitable allotment reference sites include those which are offshore, in a national or state park in which tower construction is prohibited, on an airport, or otherwise in an area which would necessarily present a hazard to air navigation.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

I. Need for and Purpose of this Action:

This action is taken to establish a procedure by which an FM licensee or permittee may request a modified channel or class without first submitting a petition for rule making. The Commission believes that this new procedure will

remove an unnecessary duplication of effort that imposes unnecessary costs on both stations seeking modifications and the Commission's resources.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

None.

III. Significant Alternatives Considered and Rejected:

The Commission proposed in the *Notice of Proposed Rule Making* to limit the availability of the procedure only to those proposals that comply with both our application criteria and our allotment standards. One option suggested to reach this objective was to require that any application filed pursuant to the new procedure meet minimum distance separation and city grade standards as applied in the allotment context, without making use of less restrictive application standards. Another option was to allow an applicant to apply for a station modification at a site that would not meet allotment standards, so long as the applicant can demonstrate that an available site exists which would comply with allotment standards. We rejected the first option on the ground that it would create an inequitable result in which the one-step procedure would be subject to a more restrictive standard than the current two-step procedure.

APPENDIX C

List of Commenters

1. Bromo Communications, Inc. ("Bromo")
2. Larry G. Fuss, d/b/a Contemporary Communications and Delta Radio, Inc. ("Fuss")
3. Audrey R. Morris ("Morris")
4. National Association of Broadcasters ("NAB")
5. North Jefferson Broadcasting Company, Inc. ("North Jefferson") [reply comments]
6. Radio South, Inc. ("Radio South")
7. Paul Reynolds ("Reynolds") [reply comments]
8. Barry Skidelsky ("Skidelsky")
9. Southern Starr Broadcasting Group, Inc. ("Southern Starr") [reply comments]

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-348

In the Matter of

Conflicts Between Applications
and Petitions for Rulemaking to
Amend the FM Table of Allotments.

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 28, 1993; Released: July 13, 1993

By the Commission:

1. The Commission has before it a petition for reconsideration of the *Report and Order* in this proceeding, 7 FCC Rcd 4917 (1992), filed on behalf of the Association of Federal Communications Consulting Engineers ("AFCCE"). Comments on the petition were filed by Rosenman & Colin ("R&C"), the Federal Communications Bar Association ("FCBA"), and Communications Technologies, Inc. ("CTI").[1] Reply comments were filed by Paul Reynolds.

BACKGROUND

2. The *Report and Order* determined that FM applications should be entitled to "cut-off" protection from conflicting rulemaking petitions to amend the FM Table of Allotments at some point in time just as rulemaking petitions are protected from subsequently filed rulemaking petitions and applications are protected from subsequently filed applications.[2] Therefore, we amended Section 73.208 of our Rules to provide FM applications with cut-off protection from rulemaking proposals at the same time that they receive such protection from other mutually exclusive applications -- that is, FM applications for new stations or major changes filed during a filing window are protected from rulemaking petitions at the close of the filing window.[3] All other FM applications are protected as of the date they are filed with the Commission. If conflicting rulemaking petitions are filed on or before these cut-off dates, they are considered mutually exclusive with FM applications, and the conflicts are resolved under our existing policy for making substantive choices between conflicting proposals.[4] Rulemaking petitions filed after these cut-off dates must protect the transmitter sites proposed in previously filed FM applications or be subject to dismissal.

SUMMARY OF PLEADINGS

3. *AFCCE's Petition for Reconsideration.* AFCCE requests that we reconsider the new rule insofar as it provides cut-off protection to various types of FM applications on the dates they are filed. AFCCE proposes that we instead adopt a rule cutting off FM applications from rulemaking petitions 30 days after a publicly released notice of acceptance, as initially proposed in the *Notice of Proposed Rule Making* in this proceeding, 6 FCC Rcd 7346 (1991).

4. AFCCE contends that cutting off rulemaking petitions on the date an FM application is filed undermines Section 307(b) of the Communications Act of 1934, as amended, because the new cut-off rule substantively changes a system that previously favored rulemaking proposals over applications. Under this system, AFCCE argues, rulemaking petitions were generally favored over applications because they either served higher allotment priorities or would result in a new primary service or a substantial improvement in secondary service while applications usually constituted a less beneficial improvement in secondary service. However, AFCCE asserts that, under the new rule, FM applications will now be favored over rulemaking petitions for new allotments that would serve higher allotment priorities -- such as a first local transmission service -- if the application is filed first. AFCCE believes that such a substantive change should have been considered in a generic rulemaking proceeding that evaluates whether the needs of existing stations for site changes are now greater than the need for new services or upgrades in class of channel.

5. AFCCE also contends that protecting FM applications on the date they are filed can result in inequitable treatment to parties filing counterproposals in rulemaking proceedings to amend the FM Table of Allotments. AFCCE notes that each Notice of Proposed Rule Making in an FM allotment proceeding establishes a time period of at least 30 days for filing counterproposals. However, AFCCE contends that, under the new rule, it is possible that a counterproposal could be filed during that time period and may still be rendered unacceptable because a conflicting FM application was filed earlier.[5] AFCCE asserts that since the Commission announces that it will accept counterproposals

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[1] Mullaney Engineering, Inc. ("Mullaney") filed an untimely petition for reconsideration four weeks after the deadline for submitting petitions for reconsideration set forth in Section 405 of the Communications Act of 1934, as amended, and Section 1.429 of the Commission's Rules. Therefore, it will not be considered as a petition for reconsideration. However, we will consider it as a comment to the extent that it discusses issues raised in AFCCE's petition because the pleading was filed by the deadline for submitting comments in response to petitions for reconsideration.

[2] Prior to the adoption of the *Report and Order*, at any time during the pendency of an FM application, a rulemaking petition for a new FM allotment or an upgrade in the class of an existing FM allotment could be filed that conflicted with the transmitter site proposed in the FM application. This policy is fully explained in the *Report and Order*, 7 FCC Rcd at 4917.

[3] Likewise, applications for new FM stations or major changes in the band reserved for noncommercial educational broadcasting, which are not subject to window filing procedures, are protected at the end of the 30-day period for filing mutually exclusive applications as established in periodically released Commission Public Notices.

[4] *See Report and Order*, 7 FCC Rcd at 4917.

[5] For example, if a Notice of Proposed Rule Making establishes a counterproposal deadline of May 1, and if a conflicting FM

as of a certain date, it cannot, consistent with *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327 (1945), accept only those counterproposals filed prior to a conflicting application.

6. Furthermore, AFCCE alleges that rulemaking petitioners do not receive the same procedural treatment as applicants when the rulemaking petition is filed first. AFCCE states that, unlike applications, rulemaking petitions are not cut off when filed. Indeed, AFCCE contends that the Commission accepts later-filed conflicting applications from four to six months after a petition is filed. AFCCE believes that providing an opportunity for conflicting filings, such as 30 days after public notice of the filing of petitions and 30 days after public notice of the acceptance of applications, would be more equitable to parties filing counterproposals.

7. Finally, AFCCE contends that the new rule imposes a difficult burden on parties preparing rulemaking petitions because they will often not know that a conflicting application has been filed. AFCCE claims that the public is not aware of the filing of an application until public notice is given and the Commission's database is updated and published, which generally takes approximately three to four weeks. Although AFCCE recognizes that, in some cases, it may be possible to refile the petition to avoid the conflict, this is not true in the case of counterproposals, since counterproposals must be technically and procedurally correct when filed and cannot be revised.[6]

8. *Comments.* Five comments and one reply comment were filed in response to AFCCE's petition for reconsideration. R&C, CTI, and Reynolds agree that FM applications should not be given cut-off protection on the dates they are filed. They argue that the lag time between the filing of an FM application and both its appearance in the Commission's FM Database and its publication in a commercially available database make it difficult to prepare rulemaking petitions and advise clients. As a result, R&C and CTI believe that, at a minimum, the rule should be modified so that FM applications do not receive cut-off protection until 30 days after public notice of acceptance for filing. Alternatively, both Reynolds and CTI suggest that FM applications be given cut-off protection as against rulemaking petitions 30 days after the applications appear in commercially available databases.[7]

9. The FCBA addresses and supports AFCCE's contention that the prior filing of an application may render an otherwise timely filed counterproposal unacceptable. It believes that this places an unfair burden on parties desiring to file otherwise legitimate counterproposals and on attorneys advising their clients on when to file. The FCBA believes that this new rule in effect has taken away the "reasonable time" period provided for the filing of comments as set forth in Section 1.415(b) of the Commission's Rules, which implements Section 553 of the Administrative Procedure Act. As an alternative, the FCBA suggests that the Commission should not protect applications filed during a rulemaking comment period as against timely filed counterproposals. Rather, such applications should be considered as conflicting proposals and evaluated on their merits in the context of the rulemaking proceeding.

10. NAB and Mullaney support the new rule. They believe that it will give existing broadcasters the ability to apply for upgrades of their facilities without fear of their applications being blocked by a subsequent rulemaking petition.[8]

DISCUSSION

11. After carefully reviewing AFCCE's petition and the comments filed in response thereto, we continue to believe that the public interest is best served by retaining the cut-off rules adopted by the *Report and Order* in their current form. As we will explain below, we are not convinced that cutting off certain FM applications on the dates they are filed will create the problems alleged by AFCCE. On the contrary, providing additional time for the filing of rulemaking petitions would disserve the public interest. It would result in additional rulemaking/applications conflicts and would cause unnecessary and undesirable uncertainties and delays for FM applicants without an offsetting public benefit. We will address each of AFCCE's contentions separately.

12. *Section 307(b).* We do not agree with AFCCE's contention that our new cut-off rule violates Section 307(b) of the Act because it substantively changed a system that favored rulemaking proposals over applications. In both proposing and adopting a rule that provides cut-off protection to FM applicants from subsequently filed rulemaking petitions, we did not alter any of the substantive policies and Commission precedent for choosing between mutually exclusive rulemaking proposals and FM applications. Rather, as we stated in the *Report and Order*, rulemaking petitions filed on or before the various cut-off dates in Section 73.208 of the Rules will be considered under existing Commission precedent. What we have done, however, is to establish a deadline for filing rulemaking petitions so that FM applicants will not be exposed for a lengthy and unpredictable period of time to potentially conflicting rulemaking proposals. If resources permitted us to grant an application within a few days of a filing date or the close of a filing window, such an act would preclude the filing of a mutually exclusive petition for an allotment. Our rule compensates for inequities imposed by resource constraints. While this rule limits the filing of petitions, it does not violate Section 307(b) of the Act because it does not eliminate a party's ability to file a rulemaking proposal which may serve a higher allotment priority under Section 307(b) of the Act than a conflicting FM application. Furthermore, it is well established that the Commission has the authority to adopt procedural cut-off rules in order to promote the goals of administrative orderliness and finality. *Cf. Ashbacker Radio Corporation v. FCC*, 326 U.S. 327, 333 n.9

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application is filed and given cut-off protection on April 30, then that application is entitled to cut-off protection as against a counterproposal filed after that date.

[6] The Commission's staff has held that counterproposals must be technically correct and substantially complete when filed. *See, e.g., Eldorado and Lawton, OK*, 5 FCC Rcd 6737 (Policy and Rules Div. 1990), and cases cited therein.

[7] Reynolds also comments on the *Notice of Proposed Rule Making* in MM Docket 92-159, 7 FCC Rcd 4943 (1992) and its relationship to the instant proceeding. These matters are more appropriately considered in MM Docket 92-159.

[8] As requested in a petition for rule making (RM-7933) filed on February 10, 1992, NAB also urges the Commission to consider other rule changes that would advance the interests of stations seeking to upgrade facilities. These matters are not properly before us in this proceeding and will be addressed separately.

(1945). Without such rules, it would be difficult for the Commission to process and grant applications or rulemaking petitions. Likewise, our case law recognizes that Section 307(b) of the Act is not violated if a rulemaking petition or counterproposal is dismissed for being filed after a deadline even though, as a substantive matter, the petition or counterproposal might be preferable to those filed prior to the deadline. *See Pinewood, NC,* 5 FCC Rcd 7609, 7610 (1990). Accordingly, we reject AFCCE's contention that the new cut-off rule violates Section 307(b) of the Act.

13. *Impact on Counterproposals.* We recognize that AFCCE is correct that, under the new rule, a counterproposal filed before the counterproposal deadline in an FM allotment proceeding could be rendered unacceptable because a conflicting FM application was filed earlier. However, we do not believe that this is inequitable because potential petitioners do not have to wait to the end of the comment period to file their counterproposals. While parties may desire to file on the last day of a comment period to minimize the possibility that other counterproposals may be filed, or for other tactical reasons, they do so at a risk that an application could be filed earlier. This risk could in large part be minimized by filing a counterproposal at the earliest possible time, rather than waiting for the comment period to expire. Indeed, rulemaking petitioners could protect themselves by filing their proposals as initial petitions for rule making in lieu of waiting for a proceeding in which to file them as counterproposals. We see no public interest reason to alter the rule adopted simply to preserve potential tactical ploys by petitioners. Further, the new cut-off rule does not remove the ability of anyone to file comments under Section 1.415(b) of the Commission's Rules or Section 553 of the Administrative Procedure Act. While these sections permit interested parties to participate in rulemaking proceedings, they do not guarantee that a counterproposal will be accepted if it conflicts with other reasonable, procedural rules.

14. Likewise, we do not believe that the new rule violates *Ashbacker Radio Corporation v. FCC,* 326 U.S. 327 (1945). In essence, *Ashbacker* requires the Commission to treat similarly situated, *bona fide* applications or petitions in a like manner.[9] We believe that the new rule meets this requirement because it treats both initial rulemaking petitions and counterproposals in the same manner. The new rule requires that either type of petition be filed on or before the date that a conflicting FM application is filed to receive cut-off protection. On the contrary, if we did not protect FM applications filed during a counterproposal filing period, we would be giving counterproposals more protection than initial petitions. Moreover, *Ashbacker* does not preclude the Commission from adopting cut-off rules.[10]

15. Furthermore, the FCBA's suggestion that FM applications not be protected from subsequently filed rulemaking petitions on the date the applications are filed but at the end of the period for the filing of counterproposals is simply unworkable. It is impossible for the staff to determine if the grant of a specific application will conflict with all potential counterproposals that might be filed in response to pending rulemaking proposals. Nor does there appear to be any apparent limit to the length of time that an application must be held under this proposal since new rulemaking petitions are constantly filed, and constantly result in new comment deadlines. Each comment deadline, in turn, would create the opportunity for a potentially conflicting counterproposal. Accordingly, we do not believe that it is workable to protect FM applications at the end of counterproposal filing periods. In addition, no valid reason has been presented for departing from our conclusion in the *Report and Order* that a 30-day period for submitting rulemaking petitions after an FM application has been accepting for filing is less desirable than the rule we adopted. As we stated in the *Report and Order,* such an approach would create additional application/rulemaking conflicts, unnecessarily exposing FM applicants to additional delays and uncertainties.

16. However, in recognition of the potential difficulties created by the new cut-off rule, if the filing of a conflicting FM application renders an otherwise timely filed counterproposal unacceptable, we will permit the counterproposal to be considered in the rulemaking proceeding if it is amended within 15 days after being placed on the Public Notice routinely issued by the staff concerning the filing of counterproposals, to protect the transmitter site of the previously filed FM application. Consistent with our current procedure, however, no proposals involving communities not already included in the proceeding can be introduced during the reply comment period as a method of resolving conflicts. We will require the counterproponent to make a showing that, at the time it filed the counterproposal, it did not know, and could not have known by exercising due diligence, of the pendency of the conflicting FM application.[11] [12]

17. *Impact on Rulemaking Petitions.* AFCCE is also correct in noting that, under the new rule, rulemaking petitions do not receive the same procedural treatment as FM applications because FM applications, unlike rulemaking

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[9] *Ashbacker* specifically held that, if two mutually exclusive applications are pending, the grant of one application without a hearing to both deprives the other applicant of its right to a hearing under Section 309 of the Communications Act.

[10] *See Ashbacker Radio Corporation v. FCC,* 326 U.S. at 333 n.9.

[11] Section 73.208(a) of the Commission's Rules will be amended to include a Note stating this exception. The Appendix to this *Memorandum Opinion and Order* indicates the amended language. This amendment does not affect the Final Regulatory Flexibility Analysis included in the *Report and Order* in this proceeding.

[12] We also note that a rulemaking petitioner who seeks an upgrade that would conflict with a previously filed and cut-off FM application may be able to achieve an upgrade by proposing the allotment of an alternate channel for the applied-for frequency, so long as the transmitter site of the application is protected. Our current process allows such a result with respect to authorized FM stations, and we see no reason to give applicants any greater degree of protection. Likewise, as we stated in both the *Notice of Proposed Rule Making* and the *Report and Order* in this proceeding, the staff will attempt prior to dismissing a rule making petition to resolve any conflict between that petition and a previously cut-off FM application by imposing a site restriction on the rulemaking petition. The staff will also attempt to resolve conflicts between a rulemaking petition and a later-filed FM application by imposing a site restriction on the proposal in the petition, or by allotting an alternate channel for that proposed in the petition, whenever it is possible to do so without prejudice to a timely filed FM application or rulemaking petition.

petitions, can be given cut-off protection on the dates they are filed. However, we do not believe that this disparity warrants modifying our new cut-off procedures. The disparity is the result of inherent differences between the rulemaking and application processes. Since a petition to amend the FM Table of Allotments is subject to notice and comment rulemaking procedures, it cannot be given cut-off protection from other rulemaking petitions or counterproposals until a period for filing counterproposals has elapsed. However, an FM minor change application can be given cut-off protection on the date it is filed as against subsequently filed applications and could be granted as soon as it is received.

18. *Database Concerns.* Although AFCCE contends that the new rule imposes an unfair burden on parties preparing rulemaking petitions because they will often not know that a conflicting FM application has been filed, we do not believe that the rule unfairly treats rulemaking petitioners. On the contrary, both prospective rulemaking petitioners and applicants are treated the same in terms of accessibility to information. Consequently, concerns about unfairness deriving from the availability of information in the Commission's FM Database do not warrant modifying our new rule.[13]

19. *Conclusion.* We do not believe that providing cut-off protection to certain types of FM applications on the dates they are filed as against subsequently filed rulemaking petitions will unfairly prejudice parties seeking to file rulemaking petitions. On the contrary, we are of the view that providing an additional 30-day period for the filing of rulemaking petitions after an FM application has been accepted for filing will result in additional rulemaking/application conflicts, thereby unnecessarily exposing applicants to precisely the delays and uncertainties that this proceeding was intended to obviate.

20. Accordingly, IT IS ORDERED, That the petition for reconsideration filed on behalf of the Association of Federal Communications Consulting Engineers IS GRANTED IN PART AND DENIED IN PART.

21. IT IS FURTHER ORDERED, That Section 73.208(a) of the Commission's Rules IS AMENDED as set forth in the Appendix below, effective 30 days after publication of a summary in the Federal Register.

22. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Mullaney Engineering, Inc. IS DISMISSED.

23. IT IS FURTHER ORDERED, That MM Docket No. 91-348 IS TERMINATED.

24. For further information, contact Andrew J. Rhodes, Mass Media Bureau, (202) 632-5414.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[13] As a general matter, we note that the FM Database constitutes an unofficial listing of data. *See* 47 C.F.R. § 0.434(e).

APPENDIX

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 73 - Radio broadcast services

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. Sections 154 and 303.

2. Section 73.208 is amended by adding a note at the end of paragraph (a) to read as follows:

Section 73.208 Reference points and distance computations.

(a) * * *

Note: If the filing of a conflicting FM application renders an otherwise timely filed counterproposal unacceptable, the counterproposal may be considered in the rulemaking proceeding if it is amended to protect the site of the previously filed FM application within 15 days after being placed on the Public Notice routinely issued by the staff concerning the filing of counterproposals. No proposals involving communities not already included in the proceeding can be introduced during the reply comment period as a method of resolving conflicts. The counterproponent is required to make a showing that, at the time it filed the counterproposal, it did not know, and could not have known by exercising due diligence, of the pendency of the conflicting FM application.

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-188

In the Matter of

Amendment of Section 73.202(b), RM-8278
Table of Allotments,
FM Broadcast Stations.
(Westbrook, Maine)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1993; Released: July 13, 1993

Comment Date: September 3, 1993
Reply Comment Date: September 20, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Buckley Broadcasting Corporation of Maine ("petitioner"), requesting the substitution of Channel 265B1 for Channel 265A at Westbrook, Maine. Petitioner also requests modification of its license for Station WYNZ-FM, Channel 265A, to specify operation on Channel 265B1. Petitioner provided an engineering study in support of the petition and indicated it would file an application for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration. Channel 265B1 can be allotted to Westbrook, Maine, consistent with the Commission's spacing requirements at petitioner's specified site.[1] Since Westbrook is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. We shall also propose to modify petitioner's license for Station WYNZ-FM to specify operation on Channel 265B1 in lieu of Channel 265A. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of the higher powered channel at Westbrook or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested party.

3. In view of the above, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Westbrook, Maine	265A	265B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 3, 1993,** and reply comments on or before **September 20, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Martin R. Leader
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W., Suite 800
Washington, D.C. 20037-1170

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

[1] The coordinates for Channel 265B1 at Westbrook are 43-42-15 and 70-06-00.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Big Bear Lake and Yucaipa,
California)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: June 18, 1993; Released: July 13, 1993

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for reconsideration filed on behalf of KBBL, Inc. ("KBBL"), permittee of Station KBBL(TV), Channel 59, Big Bear Lake, California, of a staff letter returning as unacceptable its petition for rule making seeking the reallotment of UHF television Channel 59 to Yucaipa, California, as that community's first local television service, and modification of its construction permit accordingly.[1] Gulf-California Broadcast Company, Inc. ("GCBC"), licensee of Station KESQ-TV, Channel 42, Palm Springs, California, filed an opposition to the petition for reconsideration. KBBL filed reply comments and a supplement thereto.

2. KBBL subsequently filed a request to withdraw its petition for reconsideration,[2] which we will grant. As a result of our decision, the opposing comments filed in this proceeding by GCBC need not be considered.

3. In view of the above, IT IS ORDERED, That the petition for reconsideration filed by KBBL, Inc., seeking the reallotment of UHF television Channel 59 to Yucaipa, California, and modification of the construction permit for Station KBBL(TV), IS HEREBY DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] Public Notice of the petition for reconsideration was given January 25, 1993, Report No. 1926.
[2] KBBL advises that simultaneous with its instant withdrawal request, it has voluntarily submitted the construction permit for Station KBBL(TV) (File No. BPCT-930392KG) for cancellation.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-186

In the Matter of

Amendment of Section 73.202(b), RM-8258
Table of Allotments,
FM Broadcast Stations.
(Half Way and Ozark,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1993; Released: July 13, 1993

Comment Date: September 3, 1993
Reply Comment Date: September 20, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed jointly by Ozark Mountain Broadcasting, Inc. ("OMB"), permittee of Station KZPF(FM), Ozark, Missouri, and KYOO Broadcasting Company ("KBC") (jointly referred to as "petitioners"), permittee of Station KYOO-FM, Half Way, Missouri. OMB requests substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. KBC proposed the substitution of Channel 256A for Channel 226A at Half Way, Missouri, and modification of the construction permit for Station KYOO-FM to specify operation on Channel 256A.

2. In support of the proposal, petitioners state that the substitution of channels at Half Way and Ozark will permit improved service by both stations to their respective communities. Petitioners also state that substitution of Channel 256A for Channel 226A at Half Way is required to effectuate the upgrade at Ozark. In addition, petitioners state that OMB has agreed to reimburse KBC for its reasonable costs associated with changing channels at Half Way. There is no need to issue an *Order To Show Cause* in this proceeding, since KBC has consented to change its site and channel at Half Way.

3. We believe the public interest will be served by the proposed substitutions because they will result in the provision of expanded service at Ozark. Channel 225C2 can be allotted to Ozark, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules at the site specified by OMB.[1] The allotment at Ozark currently conflicts with the licensed site for Station KFAY-FM, Channel 225A, Huntsville, Arkansas, and the construction permit site for Station KXBR, Channel 228A, Greenfield, Missouri. The authorization for each channel was modified in previous proceedings, and the substituted channels are fully spaced to OMB's proposal.[2] Therefore, issuance of a license for Channel 225C2 at Ozark is contingent on the licensing of Station KFAY-FM, Huntsville, on Channel 258A and Station KXBR, Greenfield, on Channel 299A. Channel 256A can be allotted to Half Way, Missouri, in compliance with the Commission's spacing requirements at KBC's specified site.[3] Therefore, we shall propose to modify the construction permit for Station KYOO-FM at Half Way, Missouri, to specify operation on Channel 256A.

4. We shall propose to modify the license of Station KZPF(FM), Ozark, Missouri, to specify operation on Channel 225C2, as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest in the channel.

5. Accordingly, for the reasons stated above, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Half Way, Missouri	226A	256A
Ozark, Missouri	225A	225C2

6. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send By Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the following:

Demaree Media, Inc.
Station KFAY-FM
P.O. Box 878
Fayetteville,
Arkansas 72712

Henden-McChristian
Communications
Station KXBR
Rt. 5, Hwy 72 East
Gravette, Arkansas 72736

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 3, 1993,** and reply comments on or before **September 20, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III
Post Office Box 2506
Pawleys Island, South Carolina 29585

[1] The coordinates for Channel 225C2 at Ozark are 36-58-45 and 93-26-38.

[2] The *Report and Order* in MM Docket 92-49, modified the license for Station KFAY-FM, Huntsville, to specify operation on Channel 258A and modified the construction permit for Station KXBR, Greenfield, to specify operation on Channel 299A. *See* 8 FCC Rcd 734 (1993).

[3] The coordinates for Channel 256A at Half Way are 37-44-35 and 93-15-00.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-191

In the Matter of

Amendment of Section 73.606(b), RM-8088
Table of Allotments,
TV Broadcast Stations.
(Pueblo, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 21, 1993; Released: July 13, 1993

Comment Date: September 3, 1993
Reply Comment Date: September 20, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed jointly by the University of Southern Colorado ("USC"), licensee of noncommercial television Station KTSC(TV),[1] Channel *8, Pueblo, Colorado, and Sangre de Cristo Communications, Inc. ("SCC"), licensee of commercial television Station KOAA-TV, Channel 5, Pueblo,[2] to exchange their channels, pursuant to the provisions of Section 1.420(h) of the Commission's Rules.

2. Section 1.420(h) allows a noncommercial educational television and a commercial television licensee or permittee to jointly petition for rule making to amend the Television Table of Allotments to exchange channels. The channel to be obtained by the noncommercial educational licensee or permittee would be reserved for noncommercial educational use and the channel acquired by the commercial licensee would be dereserved. Proposals must involve intraband channel changes, the stations involved must serve "substantially the same market, and the proposal must serve the public interest." *See Intraband Television Channel Exchanges,* 59 RR 2d 1455 (1986), *recon. denied,* 3 FCC Rcd 2517 (1988). Parties must offer assurances that any consideration resulting from the exchange will be devoted exclusively to activities related to the operation of the noncommercial educational television station.

3. SCC advises that it will provide financial support to USC, and will donate its translator Station K30AA, Colorado Springs, Colorado, as well as the existing licensed facilities of Station KOAA-TV to USC, if the requested exchange of Channel *8 and Channel 5 is approved. With respect to the public interest benefits of this proposal, petitioners state that the channel exchange would enable USC to improve the quality of Station KTSC(TV)'s signal, increase the coverage of its existing translator network by operating translators at Grand Junction and Durango, Colorado, and offer additional noncommercial programming. Petitioners state that the planned expansion of USC's translator network will enable Station KTSC(TV) to provide a first noncommercial educational television reception service to approximately 83,000 new viewers in western Colorado, and a new reception service to 299,897 persons within either the proposed Grade B service contours of Station KTSC(TV) or within the service area of new translators to be constructed from a portion of SCC's monetary consideration to USC. As to the benefits to accrue to SCC, petitioners advise that although SCC has diligently strived to improve the facilities of Station KOAA-TV in order to provide an enhanced service to Pueblo and the surrounding area, it has been unable to attain its goal. Specifically, SCC advises that it has been precluded from relocating Station KOAA-TV to an antenna farm used by other commercial stations in the joint Colorado Springs-Pueblo market because of the restrictions of the minimum distance separation requirements of Section 73.610(b) of the Commission's Rules. Approval of the requested channel exchange would enable SCC to achieve its goal of expanded service to the entire market, while simultaneously providing substantial benefits to USC.

4. *Background.* USC is licensed to operate Station KTSC(TV) from a site on Baculite Mesa, at coordinates 38-22-25 and 104-33-27. USC previously used a television translator on Channel 53 to provide service to Colorado Springs, which lies partly within its predicted principal community contour but which does not receive adequate service from Station KTSC(TV) due to intervening terrain barriers. In August 1990, USC was required to cease operation on Channel 53 when a full power station commenced operation on that channel. Since USC offers various educational and outreach services in Colorado Springs, it attempted to locate a new channel at the Baculite Mesa site for its translator service to continue serving that community, but was unsuccessful in its efforts at that time.[3]

5. In order to enable USC to continue providing public television reception service to the Colorado Springs area, USC filed a modification application (File No. BPET-900122KE) to change its site. On February 28, 1991, the Commission granted Station KTSC(TV)'s modification application, with conditions. The permit included a waiver of Section 73.610(b) of the Commission's Rules to permit use of a site for Station KTSC(TV) at an antenna farm on Cheyenne Mountain at coordinates 38-44-44 and 104-51-39. That site is 296.1 kilometers (184 miles) from co-channel Station KJCT(TV), Grand Junction, Colorado, at coordinates 39-02-55 and 108-15-06, and 291.9 kilometers (181.3 miles) from vacant co-channel 8 at Laramie, Wyoming, at reference coordinates 41-18-47 and 105-35-26. Pursuant to the requirements of Section 73.610(b) of the Commission's

[1] On February 28, 1991, USC was granted a construction permit (File No. BPET-900122KE) to operate Station KTSC(TV) from a transmitter site on Cheyenne Mountain, as indicated in paragraph 5, *infra.* Although the construction permit expired on February 28, 1993, an application for an extension of time to complete the modification of Station KTSC(TV)'s facilities has been filed (File No. BMPET-930216KE).

[2] USC and SCC will be referred to collectively in this proceeding as "petitioners."

[3] USC currently operates translator Station K15BX under special temporary authority (STA) to provide service to Colorado Springs.

Rules, a minimum distance separation of 304.9 kilometers (189.5 miles) is required between co-channel stations in Zone II. Station KTSC(TV) stated that intervening terrain factors, combined with its willingness to reduce its effective radiated power to the north and west of Pueblo, would reduce the possibility of interference to the Grand Junction, Colorado, station or to a future station on Channel 8 in Laramie, Wyoming.

6. *Discussion.* Initially, we note that petitioners' proposal appears to comply with the criteria established in *Intraband Television Channel Exchanges*, 59 RR 2d 1455 (1986). Both stations are within the same band and serve the same community of license. Furthermore, USC states that it intends to use the proceeds from the exchange of its Channel *8 with SCC's operation of Station KOAA-TV on Channel 5 solely for improvements related to the operation of Station KTSC(TV). Each station could benefit by potentially improving the quality of their facilities, thus providing a public benefit by rendering either new or improved commercial and noncommercial service. Finally, Pueblo would retain both commercial and noncommercial stations after the exchanges, if the proposal is adopted.

7. We have several areas of concern on which we request comment. The first concern is related to SCC's preferred site for Station KOAA-TV on Channel 8. Although SCC proposes to use USC's presently authorized construction permit site for Station KOAA-TV at coordinates 38-44-44 and 104-51-39, as indicated above, we note that USC has not operated Station KTSC(TV) from the site proposed in its construction permit. Since no facilities have been operated at this site, we believe it appropriate to propose to modify SCC's authorization for Station KOAA-TV to specify the site in USC's outstanding license for Station KTSC(TV), and not its construction permit site.[4] SCC can operate Station KOAA-TV on Channel 8 at the presently licensed site of Station KTSC(TV), which is also the licensed location of Station KOAA-TV's present operation on Baculite Mesa, at coordinates 38-22-25 and 104-33-27, in conformity with the minimum distance separation requirements of the Commission's Rules, rather than the site specified in the construction permit issued to USC at coordinates 38-44-44 and 104-51-39.[5] Therefore, we will propose the channel exchange and dereservation of Channel *8 and the reservation of Channel 5 at coordinates 38-22-25 and 104-33-27 to accommodate the petitioners' proposal.

8. Our second area of concern is related to USC's proposed noncommercial operation on Channel *5 at Pueblo at the presently licensed site of Station KOAA-TV. As previously noted, approximately two years ago, USC was granted a waiver of Sections 73.610 and 73.685 based upon its stated need to continue providing noncommercial educational television service to Colorado Springs without relying on a translator to provide a viewable signal to that community. With respect to the instant proposal, we note that according to petitioners' engineering exhibit, shadowing occurs in Colorado Springs from the KOAA-TV/KTSC(TV) licensed site which requires a translator to provide service to that portion of their service area. Therefore, while we expect USC to continue its commitment to serve Colorado Springs, in light of its current proposal, we do not believe it is generally desirable to replace primary service to that community, as contemplated in connection with USC's waiver request, with a secondary service which could ultimately be forfeited to a full service television operation, and we invite comments in this regard. In the event USC plans to discontinue its service to Colorado Springs, we would question the public interest benefits of the proposal.

9. Our third area of concern is related to the potential gain in noncommercial reception service presented by USC's proposal. According to petitioners, the channel exchange will enable USC to provide new noncommercial reception service to 299,897 persons residing within either the proposed Grade B contour of Station KTSC-TV if permitted to operate on Channel *5, or within the service area of the new translators USC proposes to construct at Grand Junction and Durango with the funds derived from the channel exchange.[6] Further, petitioners' engineering studies reflect that USC's Station KTSC(TV) currently pro-

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[4] In this regard, although USC has filed an application for an extension of time within which to construct the unbuilt facilities of Station KTSC(TV) on Cheyenne Mountain, we note that pursuant to the terms of Section 73.3535(b) of the Commission's Rules, grant of such an extension request requires a showing that either construction is complete and testing is underway; or that substantial progress has been made in the construction of the station; or that reasons clearly beyond the permittee's control prevented construction and that all possible steps have, nevertheless, been taken to resolve the problem and to proceed with construction.

While USC's involvement in this rule making may provide a sufficient basis to warrant an extension of its construction deadline, it does not absolve it from its commitment to complete the construction of Station KTSC(TV)'s modified facilities. Permittees are expected to abide by the Commission's Rules regarding time constraints and limitations governing extension requests in order to avoid unwarranted delays in service to the public. In the absence of a showing that the instant proposal could adversely affect USC's commitment to construct the modified facilities for Station KTSC(TV), its decision to defer construction must be viewed as a business judgment and not a situation beyond its control. *See, e.g., New Dawn Bl casting*, 63 RR 2d 1198 (1987).

[5] As indicated in paragraph 5, *supra*, the allotment of Channel 8 at USC's construction permit site would be short spaced to Station KJCT(TV), Channel 8, Grand Junction, Colorado, and to vacant Channel 8 at Laramie, Wyoming. Also, as previously stated, although USC was granted a waiver for Station KTSC(TV) on Channel *8 based in part on the need to continue providing public television service to Colorado Springs without relying on a translator to accomplish its goal, we do not believe it appropriate to determine at the rule making stage whether a similar request from a commercial licensee would be granted at the application stage.

[6] Petitioners advise that improvements in USC's translator network would result in an increase in Station KSTC(TV)'s viewers in Grand Junction and Durango, Colorado, as well as communities located in the following counties:

	Population (1990 U.S. Census)
Mesa	93,145
Delta	20,980
Montrose	24,423
Ouray	2,295
San Miguel	3,653
Dolores	1,504
San Juan	745
La Plata	32,284

vides service to 598,614 persons from its licensed site, whereas SCC's Station KOAA-TV currently serves 604,012 persons from the same location. Thus, USC would gain service to 5,398 persons by moving Station KSTC(TV) to Channel *5. According to petitioners, the proposed population gain to USC's operation of Station KTSC(TV) on Channel *5 is attributable to the transmission equipment that USC will receive from SCC's Station KOAA-TV as a condition of the channel exchange. Additionally, petitioners' engineering exhibit states that SCC's translator Station K30AA, Colorado Springs, which will be donated to USC in the channel exchange, currently provides service to 340,260 persons within its Grade A contour. This represents an additional potential gain of 211,633 persons over USC's STA operation of its translator Station K15BX, Colorado Springs. Furthermore, petitioners advise that USC's planned expansion of its existing network of 11 translators throughout Colorado by adding translators at Grand Junction and Durango will enable USC to provide a first educational service to an additional 82,871 persons in and around those communities. The majority of USC's service gain showings are related to its proposed translator expansion. However, since Commission policy is to treat translators as secondary services for purposes of spectrum priority, USC's projected translator expansion would not be protected against the initiation of a full service facility.[7] Thus, the projected population gains attributed to USC's proposed operation of translators at Grand Junction, Durango and Colorado Springs may be too speculative to be considered in the context of this rule making proceeding. Therefore, we may not consider these gains in conjunction with the overall benefits associated with this proposal. Petitioners are requested to state whether they would be willing to accept adoption of this proposal conditioned on the commencement of translator service as proposed by USC.

10. In view of the above, we will propose to modify the license of Station KTSC(TV), Channel *8, Pueblo, Colorado, to specify operation on Channel *5 and to modify the license of Station KOAA-TV, Channel 5, Pueblo, to specify operation on Channel 8, pursuant to the provisions of Section 1.420(h) of the Commission's Rules. As indicated above, if this proposal is granted, Station KTSC(TV) may operate on Channel *5 at the existing licensed site of Station KOAA-TV.[8]

11. This proposal is not affected by the Commission's current freeze on television petitions for rule making or construction permit applications for vacant allotments since this proposal involves an exchange of allotments, with no change in the overall number of allotments in the community and no new allotment will become available for application. *See Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 Fed. Reg. 28346, July 29, 1989.

12. We believe the public interest would be served by proposing the allotment of Channel *5 to Pueblo as a substitute noncommercial educational channel for Channel *8, as well as the allotment of Channel 8 to Pueblo as a substitute commercial channel for Channel 5. Accordingly, we seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules with respect to Pueblo, Colorado, as follows:

	Channel No.	
City	Present	Proposed
Pueblo, Colorado	5, *8, 26+, 32-	*5, 8, 26+, 32-

13. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

14. Interested parties may file comments on or before **September 3, 1993,** and reply comments on or before **September 20, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Wayne Coy, Jr., Esq.
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036
(Counsel for University of Southern Colorado)

Kevin F. Reed, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
(Counsel for Sangre de Cristo Communications, Inc.)

15. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.606(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

16. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is

Montezuma	18,672
Gunniston	10,273
Total	207,974

[7] Section 74.702(b) of the Commission's Rules provides that changes in the existing Television Table of Allotments may be made without regard to existing television translator stations and that, where such changes result in initiation of service which results in interference to reception of the signal of a full service station, the licensee of the interfering translator station must eliminate the interference or file applications for changes in their frequency.

[8] As stated previously, Station KTSC(TV) and Station KOAA-TV are both licensed to operate from an electronics site on Baculite Mesa at coordinates 38-22-25 and 104-33-27.

no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Applications of

National Wireless Video, Inc.

For Authority to Construct
and Operate Multichannel Multipoint
Distribution Service stations on the
E-group and F-group channels at

	File Nos.
Albany, Georgia	10742-CM-P-83
Burlington, North Carolina	10772-CM-P-83
Muskegon, Michigan	10874-CM-P-83
Ocala, Florida	10877-CM-P-83

ORDER ON RECONSIDERATION

Adopted: June 30, 1993; Released: July 13, 1993

By the Chief, Domestic Facilities Division:

1. *Introduction.* National Wireless Video, Inc. (National) filed petitions for reconsideration of the dismissals by the Domestic Facilities Division (Division) on delegated authority of its applications for authority to construct and operate Multichannel Multipoint Distribution Service (MMDS) stations on the E-group and F-group channels at the above-referenced locations, and requested reinstatement of these applications.

2. *Background.* As the result of Commission lotteries, National's applications were selected for qualification review. Subsequently, Division staff initiated a qualification review of the applications, pursuant to 47 C.F.R. Sec. 21.32. Upon examination, the applications were found to contain several deficiencies that precluded the staff from making a finding that National was legally, technically, financially, and otherwise qualified to be a licensee, and that a grant of its applications would serve the public interest. National was notified by separate letters of these deficiencies and provided an opportunity to cure them within thirty (30) days of the dates of each letter.[1] National was also advised in the deficiency letters that failure to file the requested information within thirty days could result in the dismissal of its applications.

3. National provided some, but not all, of the requested information. Pursuant to Section 21.13(c), 21.20(d) and 21.28(d) of the Rules, the Division dismissed National's applications for failure to comply completely in a timely manner with the Division's request for information. National submits, on reconsideration, that reinstatement of its applications would be in public interest.

4. *Discussion.* As of the date of the Division's dismissal actions, National had submitted some, but not all, of the information necessary for evaluation of its qualifications to be an MMDS licensee. For example, National had not submitted a lease, lease option agreement, or other "concrete evidence" to demonstrate the availability of its proposed transmitter sites as required by Section 21.15(a).[2] For MMDS applications subject to the Commission's lottery proceedings, a demonstration of reasonable assurance of site availability is sufficient prior to the lottery. However, once the lottery is held, a fully-executed lease, lease option agreement, or other concrete evidence of site availability must be submitted.[3] *Video/Multipoint, Inc.*, 6 FCC Rcd 5125, 5126 (Comm. Car. Bur. 1991).

5. Also, National failed to comply with the Division's request to submit the required Section 21.902(i) ITFS interference analyses. At the time of the dismissals, Section 21.902(i) required MMDS applicants to submit, prior to receiving construction authorization, and at such time as the Commission requested it, an analysis demonstrating that the proposed MMDS facilities would not cause harmful interference to existing co-channel or adjacent-channel ITFS stations within 50 miles of the MMDS station's proposed transmitter site, or alternatively, a consent statement from the ITFS licensee. By the express language of this rule, an MMDS applicant must submit an ITFS interference analysis at such time as the Commission requests it. Despite the specific requests that these analyses be submitted by specified dates, National failed to do so. *See Fortuna Systems Corp.*, 3 FCC Rcd 5122, 5123 (Comm. Car. Bur. 1988). In addition, National failed to submit the requested current financial qualification data prior to dismissal.

6. National had a duty to submit curative amendments to its applications within thirty days of the Division's written request, or to obtain an extension of time. *VisionAire, Inc.*, 5 FCC Rcd 1952 (Comm Car. Bur. 1990).[4] Its failure to submit curative amendments for months substantially im-

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[1] The deficiencies cited in each letter were the absence of: (1) current financial qualification data or a financial certification, pursuant to 47 C.F.R. Sec. 21.17; (2) a non-affiliation statement, pursuant to 47 C.F.R. Sec. 21.900; (3) emergency repair procedures and maintenance program, pursuant to 47 C.F.R. Sec. 21.15(e); (4) antenna structure heights in agreement with FCC records; (5) beam tilt information; (6) an analysis demonstrating a lack of harmful interference to Instructional Television Fixed Service (ITFS) licensees, pursuant to 47 C.F.R. Sec. 21.902(i); and (7) a lease or lease option agreement, pursuant to 47 C.F.R. Sec. 21.15(a).

[2] Even if National was not required to comply with the requirements of Section 21.15(a), it was required, pursuant to Sec. 21.13(c), to submit a lease or lease option agreement after the Division directed it to do so. Section 21.13(a) provides, *inter alia,*: "in addition to the general application requirements of Secs. 21.13 through 21.17 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact: ...(2) As the Commission, at any time after the filing of an application... may require from any applicant... to enable it to determine whether a radio authorization should be granted..."

[3] Revision of Part 21 of the Commission's Rules, 2 FCC Rcd 5713, 5721 (1987) (Where there is a lottery "it shall be sufficient if the application adequately demonstrates reasonable assurance of the availability of the site. A license will not be granted, however, until concrete evidence of site availability is submitted." *Id.*

[4] National did request an extension of time to submit the necessary documents requested by the Commission. However,

peded the expeditious offering of MMDS at the above-referenced locations. Also, National's failure to respond in a timely manner to the Division's requests for information hindered the discharge of the Commission's statutorily-imposed duties under Title III of the Communication's Act. *By Direction of the Commission Letter to US West,* 60 Rad. Reg. 2d 8, 9 (1985) At the time of the dismissals, National had not provided the required ITFS interference analyses and the required leases or lease option agreements. The Division was not in a position, therefore, to complete evaluation of National's MMDS station proposals and its qualifications to be an MMDS licensee. *Multi-Point Television Distributors, Inc.,* 5 Fcc Rcd 519, 520 (Comm. Car. Bur. 1990).

7. *Conclusion and Ordering Clause.* Having carefully considered the arguments and evidence presented, we find that the dismissal of these applications for failure to comply with the Division's requests for information was proper, reconsideration of the action is not warranted, and reinstatement of the applications is not justified. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by National Wireless Video, Inc. regarding the above-reference MMDS applications ARE DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. *See* 47 C.F.R. Secs. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

the extension was requested months after the deadline for responding to the Division's initial requests for information, and therefore, the request was denied.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-202

In the Matter of

Amendment of Section 73.202(b), RM-8229
Table of Allotments,
FM Broadcast Stations.
(Lewiston, Idaho and
Clarkston, Washington)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 21, 1993; Released: July 13, 1993

Comment Date: September 3, 1993
Reply Comment Date: September 20, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lewiston/Clarkston Christian Broadcasters ("petitioner"), seeking the allotment of Channel 286A to Lewiston, Idaho, as that community's fourth local FM service, and the allotment of Channel 275A to Clarkston, Washington, as that community's second local FM service. Petitioner states that it will apply for the respective channels, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 286A to Lewiston, Idaho, and the allotment of Channel 275A to Clarkston, Washington, since an interest has been expressed in providing the communities with additional local FM service. Channel 286A can be allotted to Lewiston in compliance with the Commission's minimum distance separation requirements without a site restriction.[1] Channel 275A can be allotted to Clarkston in compliance with the Commission's minimum distance separation requirements without a site restriction.[2]

3. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Lewiston, Idaho	243C1, 268C1 295C	243C1, 268C1, 286A, 295C
Clarkston, Washington	231C	231C, 275A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 3, 1993,** and reply comments on or before **September 20, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John F. Garziglia
Pepper & Corazzini
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Attorney for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 286A at Lewiston are North Latitude 46-24-42 and West Longitude 117-01-12.
[2] The coordinates for Channel 275A at Clarkston are North Latitude 46-24-42 and 117-03-06.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WEST PENN AUDIO, INC. File No. ENF-93-03

FINAL ORDER

Adopted: July 6, 1993; Released: July 14, 1993

By the Acting Chief, Common Carrier Bureau:

1. On November 19, 1991, the Commission's Common Carrier Bureau (Bureau) received information indicating that a subscriber line in the District of Columbia and a 900 services line were being used to provide sexually explicit recorded telephone messages, in apparent violation of Section 223(b) of the Communications Act, 47 U.S.C. § 223(b), and Section 64.201 of the Commission's rules, 47 C.F.R. § 64.201. The Bureau's Enforcement Division, with the assistance of the Commission's Field Operations Bureau, initiated an investigation which included the monitoring and taping of calls placed to the subscriber line. The content of the messages transmitted over these lines was determined to have originated from West Penn Audio, Inc. (West Penn) of Pittsburgh, Pennsylvania.

2. The Enforcement Division subsequently entered in consent decree negotiation with counsel for West Penn concerning West Penn's apparent violations of Section 223(b) of the Act, and Section 64.201 of the rules. The Enforcement Division has reached an agreement with West Penn and its president, James Austin, that would terminate this proceeding. The terms and conditions of the agreement are contained in the attached Consent Decree.

3. We have reviewed the terms of the Consent Decree and evaluated the circumstances of this case. We believe that the public interest would be served by approving the Consent Decree, the terms of which are hereby incorporated by reference.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Consent Decree, incorporated by reference herein, is hereby ADOPTED.

5. IT IS FURTHER ORDERED that the above-referenced proceeding is hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554
June 30, 1993

In the Matter of

WEST PENN AUDIO, INC. File No. ENF-93-03

CONSENT DECREE

6. On November 19, 1991, the Commission's Common Carrier Bureau (Bureau) received information indicating that a subscriber line in the District of Columbia and a 900 services line were being used to provide sexually explicit recorded telephone messages, in apparent violation of Section 223(b) of the Communications Act, 47 U.S.C. § 223(b), and Section 64.201 of the Commission's rules, 47 C.F.R. § 64.201. The Bureau's Enforcement Division, with the assistance of the Commission's Field Operations Bureau, initiated an investigation which included the monitoring and taping of calls placed to the subscriber line. The content of the messages, which were subsequently transmitted over these lines, was determined to have originated from West Penn Audio, Inc. (West Penn) of Pittsburgh, Pennsylvania. James Austin is the owner of West Penn.

7. For purposes of this Consent Decree, the following definitions apply:

a. "Common Carrier Bureau (Bureau)" means the Common Carrier Bureau of the Federal Communications Commission;

b. "West Penn" means the company, firm, or enterprise doing business under the name West Penn Audio, Inc., or any owner, officer, director, or partner acting on behalf of West Penn Audio, Inc., in connection with the messages that are the subject of this Consent Decree;

c. "James Austin" means James Austin as an individual and as an owner or officer or employee of either West Penn or any other company;

d. "Final Order" means an order of the Bureau adopting the terms and conditions of this Consent Decree and formally disposing of the above-captioned proceeding against West Penn;

e. "Section 223(b)" means Section 223(b) of the Communications Act and any applicable regulations in force on the dates of the violations alleged by the complaint. Section 223(b) prohibited the transmission of obscene messages for commercial purposes, as well as the transmission of indecent messages for commercial purposes to persons under the age of 18, and provided that the Commission adopt a regulation permitting certain defenses to prosecution. "Section 223(b) as amended" refers to Section 223(b) as it exists on the effective date of this Consent Decree and to all amendments that will be made to Section 223(b) subsequent to that date.

f. "Message services" means the business of providing to a caller via telephone, either recorded messages or live conversations;

g. "Sexually-explicit" message services are the provision of communications that are obscene or indecent within the meaning given the terms obscene or indecent contained in Section 223(b) or Section 223(b) as amended;

h. "Effective date of this Consent Decree" is the date that the Final Order is released.

8. West Penn and James Austin admit the jurisdiction of this Commission over them and over the subject matter of this action for purposes of this Consent Decree and any Final Order.

9. West Penn and James Austin agree that the provisions of this Consent Decree shall be incorporated by reference in any Final Order, as described in paragraphs 8 and 11 below.

10. West Penn and James Austin waive any rights they may have to appeal any Final Order, as described in paragraphs 8 and 11 below.

11. West Penn and James Austin represent as follows: West Penn stopped using the telephone numbers at issue in this proceeding to provide sexually-explicit recorded message services prior to October 1, 1992.

12. In consideration for the termination by the Bureau of this proceeding as against West Penn and James Austin in accordance with the terms of this Consent Decree, West Penn and James Austin agree to the following terms, conditions and procedures that the parties believe will facilitate a fair and expeditious resolution of the above-captioned proceeding in a manner that would serve the public interest. West Penn and James Austin agree to the following terms, conditions and procedures without admitting any of the alleged violations investigated by the Bureau and without admitting that either has provided messages that are obscene or indecent.

a. West Penn and James Austin agree to pay without further protest, or recourse to a trial *de novo*, $5,000, by paying $1,250 every three months until the debt is satisfied. The first payment shall be within 10 days of the date the Final Order is released.[1]

b. West Penn and James Austin agree not to operate any message service in the future which would make obscene recorded messages or obscene live conversations available, and to comply with Section 223(b)(1) of the Act.

c. West Penn and James Austin agree that, to the extent that they, individually or together, operate recorded or live message services, they will comply with Section 223(b) and (c) of the Communications Act, as amended, 47 U.S.C. § 223(b), (c), and with Section 64.201 of the Commission's Rules and Regulations, 47 C.F.R. § 64.201, to ensure that these communications are not available to any person under 18 years of age.

d. It is expressly understood and agreed that compliance with these subparagraphs imposes an obligation separate and apart from any obligation of West Penn and James Austin to comply with Section 223(b) as amended or other laws or regulations that may in the future govern the provision of sexually-explicit message services. Compliance with the terms of this Consent Decree shall not in and of itself constitute a defense to any action brought under the terms of Sections 223(b) as amended or other laws or regulations that may in the future govern the provision of sexually-explicit message services. It is further agreed that nothing herein shall limit the authority of the Commission to enforce Section 223(b) as amended, or other laws or regulations that may in the future govern the provision of sexually-explicit message services, for activities engaged in involving the use of the two telephone lines at issue herein by West Penn or James Austin prior to the date of release of the Final Order.

e. West Penn and James Austin further agree to file a report with the Bureau every six months for the next five years, commencing six months from the effective date of the Consent Decree, advising the Commission of the telephone numbers that each of them, together or separately, is using, or has used during the six month period prior to the report, for the purposes of providing message services, and a description of the content of those messages.

13. In light of the covenants and representations contained in paragraphs 3-7, *supra*, and in express reliance thereon, the Bureau agrees to accept this Consent Decree and to issue a Final Order incorporating this Consent Decree and terminating this proceeding against West Penn, without any finding of liability on the part of West Penn and James Austin. Further, in terminating its proceeding, the Bureau agrees that it will not institute new proceedings of any kind under Section 223(b) for any alleged violations involving the use of the two telephone lines at issue herein, by West Penn or James Austin arising out of such conduct as was the basis for this proceeding, or for conduct associated with services identified in paragraph one, occurring prior to the date of release of the Final Order.

14. West Penn and James Austin agree that any violation of the Final Order shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

15. The parties further agree that the effectiveness of this Consent Decree and the termination of the above-captioned investigation shall become effective on the date of the release of a Final Order as described herein.

16. The parties agree that if the Commission brings an action in United States District Court to enforce the terms of the Final Order, West Penn and James Austin agree that they will not contest the validity of the Final Order, will waive their statutory right to a trial *de novo* and will consent to a judgment incorporating the terms of this Consent Decree.

[1] This amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order to "File No. ENF-93-02." Such remittance should be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

/s/ Gregory A. Weiss
Gregory A. Weiss
Acting Chief
Enforcement Division
Common Carrier Bureau

/s/ James C. Austin
James Austin
President
West Penn Audio, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-199

In the matter of

Amendment of Part 87 of the Commission's Rules to implement technical requirements applicable to instrument landing system receivers and VHF Omnirange Radio receivers adopted by the International Civil Aviation Organization. RM-7610

NOTICE OF PROPOSED RULE MAKING

Adopted: June 24, 1993; Released: July 14, 1993

Comment Date: September 27, 1993
Reply Comment Date: October 27. 1993

By the Commission:

I. INTRODUCTION

1. This *Notice of Proposed Rule Making (NPRM)* proposes to implement new technical specifications contained in the Convention on International Civil Aviation (Convention)[1] for Instrument Landing System (ILS)[2] and VHF Omnirange Radio (VOR)[3] receivers on board U.S. aircraft. The proposed technical standards are consistent with the Convention and would improve the immunity of aircraft ILS and VOR receivers to interference.

II. BACKGROUND

2. The issue of compatibility between the FM broadcast service and the aeronautical mobile service has been a concern for many years.[4] In 1979, the World Administrative Radio Conference of the International Telecommunication Union (WARC-79) recommended that the International Radio Consultative Committee (CCIR) study the problem of interference between the FM broadcasting service and the aeronautical service. WARC-79 also invited the International Civil Aviation Organization (ICAO) to study the problem and communicate its findings and conclusions to CCIR.[5] In 1982, CCIR issued a report on compatibility between the two services. The pertinent general recommendation of this report was:

> It is a highly desirable aim that standard airborne ILS, VOR, and VHF [radiotelephone] system characteristics be developed with respect to the rejection of unwanted signals outside the aeronautical band.[6]

3. In 1985, ICAO promulgated technical standards for ILS and VOR receivers.[7] Under the standards, ILS and VOR receivers are to be designed to provide greater immunity to interference from two signal, third-order intermodulation products caused by VHF FM broadcast signals. ILS and VOR receivers are also to be designed with greater immunity to desensitization in the presence of strong VHF FM broadcasting signals. The ICAO timetable calls for these standards to apply to all ILS and VOR receivers installed after January 1, 1995, and to all ILS and VOR receivers in aircraft engaged in international flight after January 1, 1998.[8]

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[1] 61 Stat. 1180, T.I.A.S. 1591.

[2] ILS is a precision landing system that allows aircraft to land under low cloud ceilings and in poor visibility. It has two components, a localizer and a glide path indicator. The localizer transmits signals in the 108-118 MHz band that provide the pilot with course guidance to the centerline of the runway. The glide path indicator operates in the 329-335 MHz band, transmitting descent information to the aircraft as it approaches the runway. The combination of the localizer and the glide path indicator allow the pilot to determine both the centerline of the runway and the proper rate of descent to land safely. Federal Aviation Administration, *Airman's Information Manual* 1-1-8 (1991).

[3] VOR is a system that transmits two radio signals in the 108-118 MHz band from ground stations to an aircraft. The phase of the two signals relative to each other varies depending on the direction of the aircraft receiver from the ground station. VOR equipment on board the aircraft interprets the phase relationship of the two signals and informs the pilot of the direction to the VOR transmitter. Signals received from two VOR transmitters can be used to determine the position of the aircraft. *Id.*

[4] The portion of the radio spectrum from 108-137 MHz is allocated to the aeronautical mobile service, and is used for various types of aeronautical communications, including ILS and VOR systems. The portion of the radio spectrum from 88-108 MHz is allocated to VHF FM broadcasting. *See* 47 C.F.R. § 2.106. Because these two spectrum bands are adjacent, and because VHF FM broadcast transmitters are typically much more powerful than ILS and VOR transmitters, there is a potential for interference to ILS and VOR operations. Two types of interference to ILS and VOR systems are of greatest concern: intermodulation and receiver desensitization. Intermodulation interference may occur when two RF signals, neither of which would cause interference by itself, are received and the interaction between these signals in the aircraft ILS and VOR receiver degrades the reception of the ILS and VOR signal. Receiver desensitization may occur when a strong RF signal causes the receiver to not detect low level ILS and VOR signals. Currently, the Commission addresses potential interference problems by imposing special operating conditions on FM licenses, by requiring site, power, antenna height or frequency changes, or by some combination of the above.

[5] Radio Regulations REC 705-1 (1979).

[6] Report 929, "Compatibility Between the Broadcasting Service in the Band of About 87-108 MHz and the Aeronautical Services in the Band 108-136 MHz," VII Recommendations and Reports of the CCIR 1982 786, 796 (1982).

[7] ICAO Convention, 61 Stat. 1180, T.I.A.S. No. 1591, Annex 10, v. I, ¶ ¶ 3.1.4, 3.3.8 (1985) (ICAO).

[8] *Id.*

4. On December 21, 1990, we received a Petition for Rule Making from John F. Furr and Associates, asking the Commission to study and adopt appropriate technical standards for "avionics," *i.e.*, ILS and VOR receivers. In this petition, John F. Furr and Associates requested that we establish standards for ILS and VOR receivers that would ensure reliable service.[9] The petition did not propose any specific standards. The primary argument advanced by the petition was that the burden on VHF FM broadcasters of complying with limitations imposed to prevent interference with ILS and VOR receivers is unnecessarily onerous and that adopting improved interference immunity standards for aviation receivers would alleviate this burden.[10] Eighteen comments were filed by the parties listed in Appendix A. Sixteen of these, filed by various groups, support the idea of establishing such standards, and five of these suggest the ICAO standards. Two comments oppose the adoption of standards more stringent than the ICAO standards,[11] claiming that the ICAO standards are sufficient to ensure public safety. Aeronautical Radio, Inc. and the Air Transport Association also question the Commission's authority to impose technical standards for ILS and VOR receivers.[12] Because the petition and comments address the issue of ILS and VOR standards we are including them in this proceeding.

III. DISCUSSION

5. Almost all commercial aircraft and many general aviation aircraft are equipped with ILS and VOR systems. These aids to air navigation are an integral part of modern aviation, improving the ability of aircraft to navigate in poor weather. The use of these systems greatly increases the reliability, safety, and efficiency of aviation.

6. After careful consideration of this matter we therefore are proposing to adopt standards for ILS and VOR receivers and the deadlines for meeting the standards as set forth by ICAO. ILS and VOR receivers installed after January 1, 1995, would have to comply with the ICAO standards, and after January 1, 1998, all ILS and VOR receivers, regardless of installation date, would have to comply with the standards. This action would fulfill the United States' obligation as a signatory to the Convention. In addition, the proposed standards would increase the safety of international flight by minimizing the likelihood of interference to ILS and VOR systems. The increased immunity of ILS and VOR receivers to interference is especially important because other countries will assume that the ICAO standards are being complied with and will regulate VHF FM broadcasting stations accordingly. If U.S. aircraft flying internationally are not equipped to ICAO standards by 1998, the probability that they will encounter disabling interference in other countries increases. Finally, the aviation community has signalled acceptance of the ICAO standards. For example, RTCA,[13] which develops Minimum Operational Performance Standards (MOPS) for aviation systems, incorporated the ICAO standards into its MOPS for ILS and VOR receivers in 1986.[14] The Federal Aviation Administration (FAA) refers to these MOPS in its Technical Service Orders (TSOs)[15] and currently requires ILS and VOR receivers that do not meet the new ICAO technical standards be identified by reference to older TSOs on equipment labels.[16] In 1990, Aeronautical Radio, Inc. (ARINC), which provides aviation communications services, applied the ICAO standards for interference immunity in a document setting forth the desired characteristics of new ILS receivers.[17]

7. We note that the Commission has express authority to implement the Convention's requirements.[18] In this regard, because the Convention applies to international flights the new standards technically apply only to ILS and VOR receivers on board aircraft that fly internationally. We tentatively conclude, however, that applying the ICAO standards to domestic aircraft is necessary to further the overriding objective of the ICAO Convention, Article 44(h), to "promote safety of flight in international aviation." In this instance, it appears that the international air safety objective would be thwarted if domestic aircraft could not receive adequate landing instructions due to interference with VHF FM broadcasting signals and international aircraft in close proximity were endangered. This safety objective could also be undermined if a domestic aircraft had to land in a neighboring country in an emergency and could not receive adequate landing instructions due to interference. Accordingly, we propose to exercise our ancilliary jurisdiction and apply the ICAO standards to domestic aircraft as well as international aircraft in order to fully accomplish the Convention's purposes,[19] and to promote the safety of life and property.

8. To reduce the economic impact of this proposal on the general aviation community, we are proposing to allow ILS and VOR receivers installed before January 1, 1995, in aircraft that fly only domestically an additional seven years, until January 1, 2005, before they must comply with the

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[9] John F. Furr and Associates, *Petition for Rulemaking* 4 (1990).

[10] John F. Furr and Associates, *Petition for Rulemaking* 3-5 (1990).

[11] Comments by National Business Aircraft Association (March 7, 1991), Comments by Aeronautical Radio, Inc. and the Air Transport Association of America 2-4 (March 11, 1991).

[12] Comments of Aeronautical Radio, Inc. and the Air Transport Association of America 2-3 (March 11, 1993).

[13] RTCA is an association of aeronautical organizations of the United States from both government and industry. RTCA seeks technical solutions to problems involving the application of electronics and telecommunications to aeronautical operations. The findings of RTCA are in the nature of recommendations to all organizations concerned. While RTCA is not a government agency, its findings and recommendations are often adopted by government agencies in forming aviation policy. *See, e.g.*, RTCA, *RTCA/DO-195* i (1986).

[14] RTCA, *Minimum Operational Performance Standards for Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108-112 Megahertz* 10-15 (1986) (RTCA DO-195), RTCA, *Minimum Operational Performance Standards for Airborne VOR Receiving Equipment Operating Within the Radio Frequency Range of 108-117.5 Megahertz* 9-13 (1986) (RTCA DO-196).

[15] Federal Aviation Administration, *Technical Service Orders C-36e, C-40c* (1988).

[16] *Id.*

[17] Aeronautical Radio, Inc., *ARINC Characteristic 710-9, Mark 2 Airborne ILS Receiver* 6-7 (1990).

[18] 47 U.S.C. § 303(r) (authority to implement international radio or wire communications treaties or conventions).

[19] *See* 47 U.S.C. §§ 151, 152(a), 154(i), 303(r); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).

ICAO standards.[20] In the interests of aeronautical safety, however, we propose to require aircraft flying domestically under Instrument Flight Rules (IFR) to comply with the ICAO standards after January 1, 1998, to ensure that aircraft landing by ILS are all equipped with equally protected receivers. We are also proposing to require that all ILS and VOR receivers manufactured in or imported into the United States after January 1, 1994, meet the ICAO standards. This requirement is designed to encourage installation of ILS and VOR receivers meeting ICAO standards as soon as possible. Vendors of ILS and VOR receivers will still have until January 1, 1995, to exhaust current stocks of receivers which do not meet ICAO standards. This will encourage vendors to stock receivers meeting the ICAO standards as soon as possible. In this manner, we are attempting to avoid an economic burden to vendors of ILS and VOR receivers.

9. In summary, we propose to implement the ICAO standards for all U.S. aircraft according to the following timetable:

January 1, 1994	All ILS and VOR receivers manufactured in or imported into the United States must meet ICAO standards.
January 1, 1995	All newly installed ILS and VOR receivers on board U.S. aircraft must meet ICAO standards.
January 1, 1998	All ILS and VOR receivers on board U.S. aircraft engaged in international flight must meet ICAO standards. Domestically, no aircraft may operate under Instrument Flight Rules unless ILS/VOR receivers meet ICAO standards.
January 1, 2005	All ILS and VOR receivers on board U.S. aircraft must meet ICAO standards.

10. In order to ensure that ILS and VOR receivers meet the new standards, we propose that ILS and VOR receivers be authorized pursuant to the Commission's equipment authorization program. In accordance with our rules, notification is the appropriate method for applying for equipment authorization.[21] Notification is a type of equipment authorization issued by the Commission whereby the applicant makes measurements to determine that the equipment complies with the appropriate technical standards and reports that such measurements have been made and demonstrate the necessary compliance. Submittal of a sample unit or representative data demonstrating compliance is not required unless specifically requested by the Commission.[22] The procedures for application for equipment authorization are contained in Subpart J of Part 2 of our Rules.[23] We propose to use the test procedures defined by RTCA MOPS for ILS and VOR receivers as the basis for applications for equipment authorization.[24]

IV. CONCLUSION

11. We propose to amend the Commission's Rules to adopt interference immunity standards for all ILS and VOR receivers on board U.S. aircraft. The adoption of these standards would increase the safety of international aviation, and meet U.S. obligations under the ICAO Convention.

V. PROCEDURAL MATTERS

Ex Parte Rules - Non-Restricted Proceeding

12. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Regulatory Flexibility Act

13. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Comment Dates

14. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **September 27, 1993,** and reply comments on or before **October 27, 1993**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 21554.

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[20] Providing an extended compliance period for domestic general aviation is consistent with our past practice of reducing the financial burden of general aviation compliance with new standards. *See,* Report and Order, 6 FCC Rcd. 4692 (1991) (FCC 91-216, providing a "grandfather" clause for VHF aircraft transmitters).

[21] 47 C.F.R. § 15.101(a).

[22] 47 C.F.R. § 2.904.

[23] 47 C.F.R. Part 2, Subpart J.

[24] RTCA DO-195 § 2.4 (1986); RTCA DO-196 § 2.4 (1986) (note 14 *supra*).

VI. ORDERING CLAUSES

15. This action is taken pursuant to sections 1, 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303(r).

16. IT IS ORDERED that a copy of this *Notice* shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

17. Questions about this document should be addressed to Marc S. Martin, Room 5114, Private Radio Bureau, Federal Communications Commission, 2025 M Street N.W., Washington DC 20554, telephone (202) 632-7175.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

LIST OF COMMENTERS TO PETITION BY JOHN F. FURR AND ASSOCIATES

John D. Abdnour

Aeronautical Radio, Inc. and Air Transport Association of America

Association of Federal Communications Consulting Engineers

Robert C. Beckham

Capital Cities/ABC, Inc.

CBS, Inc.

Federal Communications Bar Association

Fisher Broadcasting, Inc.

GTE Service Corporation

Grass Roots Radio, Inc.; Guy Gannett Publishing Co., Inc.; King Broadcasting Company; Nationwide Communications Inc. (joint comment)

Lahm Suffa & Cavell, Inc.

Maximum Service Television, Inc.

National Association of Broadcasters

National Business Aircraft Association

National Public Radio

Tschirhart Broadcasting, Inc.

Utilities Telecommunications Council

Walker, Bordelon, Hamlin, Thierot & Hardy

APPENDIX B

PROPOSED RULES

Part 87 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. New Section 87.144 is added to read as follows:

§ 87.144 Instrument landing system (ILS) and VHF Omnirange Radio (VOR) receiver technical standards.

(a) The standards in paragraphs (b), (c), (d) and (e) of this Section shall apply to ILS and VOR receivers as follows:

(1) After January 1, 1994, to all ILS and VOR receivers manufactured or imported for sale in the United States;

(2) After January 1, 1995, to all newly installed ILS and VOR receivers aboard U.S. aircraft;

(3) After January 1, 1998, to all ILS and VOR receivers aboard U.S. aircraft which fly internationally and U.S. aircraft flying domestically under the Federal Aviation Administration's Instrument Flight Rules; and

(4) After January 1, 2005, to all ILS and VOR receivers aboard U.S. aircraft.

(b) The ILS and VOR receivers must provide adequate immunity from two signal, third-order intermodulation products, caused by VHF FM broadcast signals, having levels in accordance with the following:

(1) for VHF FM sound broadcasting signals in the range 107.7-108.0 MHz,

$$2N_1 + N_2 + 72 < \text{or} = 0$$

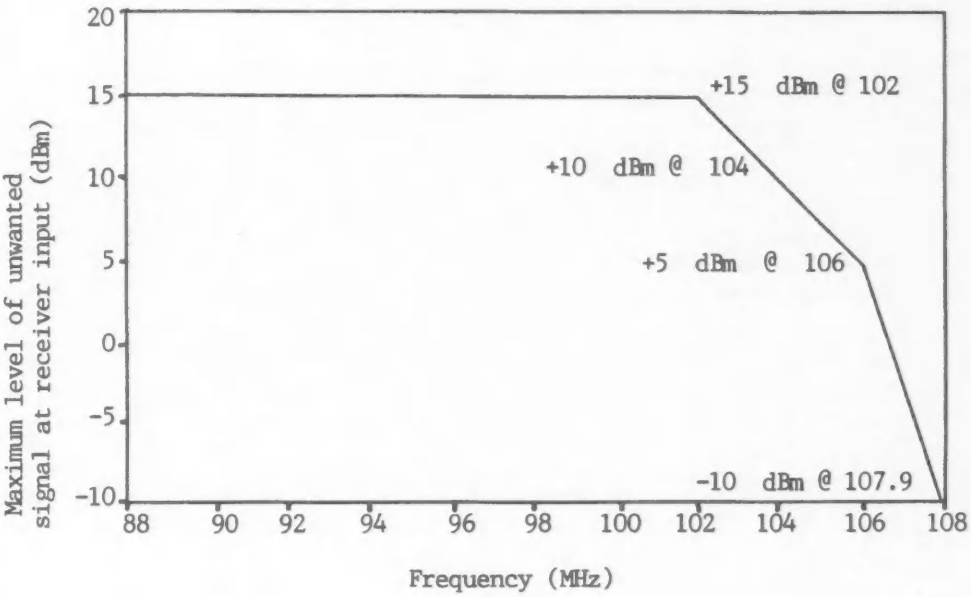
(2) for VHF FM sound broadcasting signals below 107.7 MHz,

$$2N_1 + N_2 + 3[24 - 20 \log(\Delta f/0.4)] < \text{or} = 0$$

where the frequencies of the two VHF FM sound broadcasting signals produce, within the receiver, a two signal, third-order intermodulation product on the desired ILS/VOR localizer frequency.

(3) In these equations, N_1 and N_2 are the levels (dBm) of the two VHF FM sound broadcasting signals at the ILS and VOR receiver input. Neither N_1 nor N_2 should exceed the maximum levels specified in paragraph (c). Δf equals 108.1 - f_1, where f_1 is the frequency of N_1, the VHF FM sound broadcasting signal closer to 108.1 MHz.

(c) The ILS and VOR receivers must not be desensitized in the presence of VHF FM broadcast signals having levels in accordance with the following figure:



(d) Manufacturers of ILS and VOR receivers seeking equipment authorization of these receivers shall test the receivers in accordance with the test procedures contained in the following documents, which are incorporated by reference:

(1) For ILS receivers, RTCA DO-195, "Minimum Operational Performance Standards for Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108-112 Megahertz," Section 2.4., November 17, 1986.

(2) For VOR receivers, RTCA DO-196, "Minimum Operational Performance Standards for Airborne VOR Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108-117.95 Megahertz," Section 2.4., November 17, 1986.

(e) After January 1, 1995, each newly installed airborne ILS and VOR receiver must be authorized by the Commission for use in these services. An applicant for equipment authorization of ILS or VOR receivers must notify the FAA of the filing of an authorization application. The letter of notification must be mailed to: FAA, Spectrum Engineering Division, 800 Independence Ave. S.W., Washington DC 20591 no later than the date of filing of the application with the Commission.

(1) The notification to the FAA must describe the equipment, give the manufacturer's identification, the frequency or frequencies of operation, and certify that the interference and desensitization immunity characteristics specified in Section 87.144 above are met or exceeded.

(2) The equipment authorization application must include a copy of the notification letter to the FAA. The Commission will not act for 21 days after receipt of the application to afford the FAA an opportunity to comment. If the FAA objects to the application for equipment authorization, it should mail its objection with a showing that the equipment is incompatible with the National Airspace System to: Office of Engineering and Technology Laurel Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd. Columbia, MD 21046. If the Commission receives such an objection, the Commission will consider the FAA showing before taking final action on the application.

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action

This rule making proceeding is initiated to obtain comment regarding the adoption of International Civil Aviation Organization (ICAO) technical standards for instrument landing system (ILS) and VHF Omnirange Radio (VOR) receivers on board U.S. aircraft.

Objectives

The Commission seeks to implement ICAO technical standards as required by the Convention on International Civil Aviation, to which the United States is signatory. In implementing the ICAO standards for all U.S. aircraft, whether flying internationally or only domestically, the Commission seeks to achieve the objectives of ICAO in mandating the standards and to maximize the safety of international aviation.

Legal Basis

The proposed is authorized under Sections 1, 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

None for small business entities.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The rule changes proposed in this proceeding could affect small, general aviation businesses by requiring them to replace current ILS and VOR receivers with ILS and VOR receivers meeting the ICAO standards. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The Notice currently proposes an extended compliance period for small entities which fly only domestically, to minimize the impact of the proposed rule changes on such entities. The Commission believes that this is a reasonable compromise between allowing no extension of the compliance period, which would place a heavier economic burden on small entities, and allowing a longer extended compliance period, which would have a detrimental effect on the safety of the public engaged in flight. The Notice solicits comments on alternatives.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-541

In re Applications of

JOSEPH BAHR	File No. BPH-871028MB
GUILLERMO A. BONET	File No. BPH-871029MH
RENACER BROADCASTERS CORPORATION	File No. BPH-871029MK

For Construction Permit for
New FM Station on Channel 291A
in Hormigueros, Puerto Rico

Appearances

James L. Oyster, Esq. on behalf of Joseph Bahr; *William P. Bernton, Esq.* on behalf of Guillermo A. Bonet; *Stuart B. Mitchell, Esq.* and *Andrew C. Bisulca, Esq.* on behalf of Renacer Broadcasters Corporation; and *Charles Dziedzic, Esq.* on behalf of the Mass Media Bureau.

SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON

Issued: July 6, 1993; Released: July 14, 1993

I. BACKGROUND

1. By *Initial Decision* 6 FCC Rcd.4488 (1991), a construction permit for a new FM station in Hormigueros, Puerto Rico, was awarded to Renacers Broadcasting Corporation. The Commission's Review Board remanded the proceeding to the Administrative Law Judge for hearing and preparation of a supplemental initial decision on the following issue:

> To determine whether Renacer Broadcasters Corporation was lacking in candor or made intentional misrepresentations with respect to Larry Ramos' claim to own property and the effect thereon on that applicant's basic qualifications to be a Commission licensee. (FCC 92R-25, released March 31, 1992).

2. Larry W. Ramos is the president of Renacer and is a director. The specified issue arises out of Ramos' claim of ownership of property Renacer plans to use for securing a loan for the proposed station. During questioning at his deposition about how he determined Renacer is financially qualified and what he submitted to the proposed lender for a letter promising funding, Ramos testified:

> A. We analyzed the properties I have. I saw the value of them. And I made an estimated budget, and I understood that, yes, that I could --
>
> Q. That you could do what?
>
> A. That I could carry the project of the radio station.
>
> Q. Now, when you say "I," are you referring to yourself personally?
>
> A. Yes.
>
> * * *
>
> Q. Did have to submit any financial information to the bank?
>
> A. Yes.
>
> Q. What financial information did you submit?
>
> A. Title deeds.
>
> Q. Pardon me?
>
> A. Title deeds. Property title deeds.
>
> Q. Were they to property that was owned by Radio Renacer?
>
> A. No.
>
> Q. Who owned the property?
>
> A. Myself.

Also, at an earlier stage of this proceeding, Larry Ramos submitted a declaration in which he stated the following:

> I, as representative of Renacer, obtained financing for Renacer's application from the Cooperativa de Ahorro y Credito de Lajas. In doing so, I presented the bank with title deeds to certain properties I own in Puerto Rico. I testified at my deposition that my brother, Santos Ramos, and I jointly own one of the properties. I failed to mention that Santos Ramos' wife also has an interest in the same property. The other property is jointly owned by me and my wife, Santa Morales Toro.

Although Larry Ramos claimed to "own" property, there is no public record of such ownership in either the Treasury Department which collects property taxes or the Registry of Properties for the area where the property is located.

II. FINDINGS OF FACT

3. Castolino Ramos, the father of Larry W. Ramos, lives at Carretera 327, Kilometro 0.3, Barrio La Plata, Lajas, Puerto Rico 00667. Renacer Ex. 9S. Santos Ramos and Carmen Alaida Rodriguez Mercado, husband and wife, live in a separate dwelling at the same address. Larry W. Ramos (the brother of Santos Ramos) and his wife Santa Morales Toro, live in yet another separate dwelling at that same address. Renacer Exhs. 5S, 6S.

4. Santos Ramos and his wife built the house in which they live. They built upon land deeded to Carmen Alaida Rodriguez Mercado by her mother, Ana Mercedes Toro, on September 6, 1986. Renacer Exhs. 7S, 8S; Bonet Ex. 3S. At some time in 1987, Santos Ramos and his wife claim to

have orally conveyed.[25] to Larry Ramos a certain "legal ownership interest" in "the property on which we live" so that Larry Ramos could pledge the property as collateral security for a bank loan. Renacer Exhs. 7S, 8S.

5. Castolino Ramos testified that at some time in 1977, he "received a deed dated April 11, 1977, for the land located at Carretera 327, Kilometro 0.3, Barrio La Plata, Lajas, Puerto Rico 00667 and a deed dated April 13, 1977, for the edifice constructed on that land." Renacer Ex. 9s. Castolino Ramos claims that he "gave the land and the edifice to my son, Larry W. Ramos, and his wife, Santa Morales Toro," intending that Larry Ramos and his wife should be "full owners."[26]

According to Larry Ramos:

> "Prior to our residing at the address stated above, the land on which the house was located and the edifice that then existed was owned by my father, Castolino Ramos. My father told us that my wife and I could live on the property, that he was giving the property to us as owners, and that we could build on the property." Renacer 5S.

According to Santa Morales Toro:

> "Prior to our residing in our current home, the land on which the house was located and the edifice that then existed was owned by Larry's father, Castolino Ramos. Larry's father told us that my husband and I could live on the property, that he was giving the property to us as owners, and that we could build on the property." Renacer Ex. 6S.

6. Larry Ramos has resided on this property since 1970. He married Santa Morales Toro on August 18, 1973 and since that time they have lived together on this property. While living together on the property, Larry and Santa have made additions to the first floor of the house and they have constructed an entirely new second floor. Renacer Exhs. 5S, 6S.

7. At some time in 1987, Larry Ramos sought financing for the proposed FM station. He approached Mr. William Nazario Sanchez who at the time was the supervisor of the loan department at the Cooperativa de Ahorro y Credito de Lajas. Mr. Nazario was responsible for receiving and processing loan applications, and he "requested that Mr. Ramos provide documentation of properties to be used as collateral for the line of credit." In response, Larry Ramos presented to the Cooperativa the following three deed documents:[27] 1) a deed in favor of Castolino Ramos covering the land on which is located the house where Larry Ramos and his wife live; 2) a deed in favor of Castolino Ramos covering the edifice on that land; and 3) a deed in favor of Carmen Alaida Rodriguez Mercado covering the land where Santos Ramos lives with his wife. Bonet Exhs. 1S, 2S, 3S. Upon receiving these materials, Mr. Nazario says that he "personally confirmed by verification with Castolino Ramos and Santos Ramos that Larry Ramos had "complete legal power and authority to commit the property as collateral." Renacer 10S. More specifically, what Mr. Nazario did was ask Santos Ramos (but not Santos' wife) whether Larry Ramos had Santos' permission to pledge Santos' house and land as collateral for the loan. Tr. 613. Mr. Nazario also contacted Castolino Ramos (but not Castalino's wife). Castolino confirmed that the property represented by the two deeds drawn in his favor "was his," i.e., the property was owned by Castolino Ramos. Tr. 612-613. Castolino Ramos did not tell Mr. Nazario that the property belonged to Larry Ramos. Instead, as recounted by Mr. Nazario, his conversation about the matter with Castolino Ramos was this:

> A. Okay. When I asked, 'Do I have the permission to use this property as collateral?' The answer is 'Yes.' So, 'Are you going to give this property as a warranty for the loan to Larry?' 'Yes.'" Tr. 613.

8. Mr. Nazario described the Cooperativa as a bank in a very small town where:

> "... everybody knows everybody. So many times we act in good faith, and besides Cooperativa as a credit union is a place where the people are the owners of the bank. So since everybody that makes a loan has to be a member, be part of the system, we know each and everybody, so we act in good faith. So since we know the persons involved, we know that we don't have to be really in trying to get beyond the credibility of the person." Tr. 609-610.

9. After having spoken with Santos Ramos and with Castolino Ramos, Mr. Nazario was satisfied that, for purposes of the Cooperativa, the properties represented by the three deeds "was owned" by Larry Ramos. Tr. 615. Mr. Nazario reached this conclusion notwithstanding that neither Santos or Castolino confirmed Larry Ramos' actual ownership of the properties, and even though Castolino Ramos explicitly confirmed *his* ownership of certain of them. Renacer's loan request was approved by the Cooperativa not on the basis that the pledged properties were owned by Larry Ramos, but on the basis of "the availability of the properties as collateral security." Renacer Ex. 10S.

10. Mr. Victor Sotomayor Clavell is an attorney licensed to practice law in the Commonwealth of Puerto Rico. He was formerly the Chief Counsel for the State Legislature of the Commonwealth of Puerto Rico, Chief Justice for the District of Humacao, and Chief Justice for the District of Bayamon. Mr. Sotomayor gave unrebutted testimony in support of Larry Ramos' claim of ownership of property Renacer plans to use as collateral.

---

[25] According to Mr. Victor Sotomayor Clavell, an attorney who testified on behalf of Renacer in this proceeding, there is no Statute of Frauds in Puerto Rico.

[26] Precisely when this gift was made is not shown on this record.

[27] The deeds are in the Spanish language despite the promise of counsel for Guillermo A. Bonet to supply the record with English language translations. Counsel appears to no longer view the deeds as important to his position in this case, and seeks to have them withdrawn. The request is denied and the deeds will remain in the record as evidence.

11. Mr. Sotomayor testified that Section 3644 of the Civil Code of Puerto Rico, 1930 as amended, states the following:

> "The useful expenses made on behalf of the private property of either one of the spouses through advances made by the partnership or by the industry of husband or wife are partnership property.
>
> "Building constructed during the marriage, on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same." Renacer Ex. 11S.

Mr. Sotomayor states that, "In 1962, the Supreme Court of the Commonwealth of Puerto Rico interpreted Section 3644 in *Ex Parte Espendez,* 85 P.R.R. 419, holding that when a building is constructed at the expense of the community property on land belonging exclusively to one of the spouses, both the land and the building become community property." Santos Ramos' wife owned her land before the couple built their house upon the land. They built their house using "partnership," or marital, funds. Renacer Ex. 7S, 8S. Therefore, according to Sotomayor, "both land and building [became] partnership property, and the husband and wife [became] joint title owners of said property in its entirety." Renacer Ex. 11S.

12. In Sotomayor's opinion, the permission given by Santos Ramos and his wife to Larry Ramos to "pledge the property... as security for a bank loan" created a "mandate," i.e., a contract, between the parties which is enforceable under the laws of Puerto Rico. According to Sotomayor, the mandate is enforceable pursuant to Section 3371 of the Laws of Puerto Rico Annotated, Civil Code, 1930 as amended:

> "A contract exists since one or various persons consent to obligate themselves with respect to another or others, to give a certain thing, or render a service."

Thus, in Sotomayor's view:

> "Larry Ramos was empowered to encumber the property and had an *ownership* interest in the property. There is no Statute of Frauds in the Commonwealth of Puerto Rico. Both Santos Ramos and his wife were, and still are, obligated to comply with their mandate, which is fully enforceable by Larry Ramos. The legal relationship between Larry Ramos, Santos Ramos and his wife, is not merely a power of attorney of the latter to the prior; rather, it is that of an abiding legal obligation of the second conveying a property *ownership* interest to the first. Santos Ramos and his wife obligated themselves to render Larry Ramos a service, put their partnership property up as collateral for the purpose of financing, and conveyed to Larry Ramos the authority to encumber said property as he deemed proper, fit and necessary." *(emphasis supplied).*

13. With respect to the property owned by Castolino Ramos and his wife, Sotomayor testified that Larry Ramos and Santa Morales Toro "have a real property ownership interest over the edifice built on the land owned by Castolino Ramos." That conclusion is said to be based upon Section 1164 of the Civil Code of Puerto Rico, 1930, as amended, and the construction given that section by the courts of Puerto Rico. Section 1164 is as follows:

> "The owner of the land sown or planted upon in good faith shall have the right to appropriate as his own the sowing or planting, by previously paying the compensation specified in Sections 1468 and 1469 of this title, or to compel the person who planted to pay the price of the land, and the person who sowed, the corresponding rent.
>
> "The owner of the land which has been built upon in good faith shall have the right to appropriate as his own the work, by previously paying to the owner of the work the cost of the materials and labor, or the cost of reproducing the work at the time the owner of the land exercises his right, deducting depreciation, whichever is greater, or to compel the person who constructed to pay the value of the land."

14. According to Mr. Sotomayor, in construing Section 1164, the Supreme Court of Puerto Rico has held that one who builds on another's land "possesses title of ownership over the building or edifice until the owner of the land decides to exercise the option which is allowed him under this section, and either pays the owner of the structure the materials and labor used in the construction or compels him to buy the land. *Berrocal vs. District Court,* 76 P.R.R. 35 (1954)." Thus, "there could be two distinct titles with regard to property -- one with respect to the land and the other with respect to the building constructed upon the land." It is, therefore, the act of building on another's land, i.e., "edification," which confers "title of ownership" of the edifice in the builder.

15. Castolino Ramos' property already had a house on it when he "gave the land and the edifice" to Larry Ramos and Santa Morales Toro as their home. Thereafter, Larry and Santa added to the existing house by enlarging the first floor and constructing a new second floor. As Sotomayor's testimony is understood, this new construction constituted "edification" (Tr. 582), and it was at that point that Larry and Santa obtained title to the house:

> "[Larry and Santa] obtained title from their father, Castolino Ramos Toro, through good faith edification and under Section 1164 of the Civil Code of Puerto Rico." Tr. 582.

16. "Edification" carries with it the house, the land on which the house sits, and enough of the remaining parcel to meet setback requirements imposed by local ordinance. Tr. 584. According to Sotomayor, Larry Ramos gained title to the remainder of the parcel via the gift from Castolino : "... Castolino ... had conveyed a mandate to Larry Ramos with respect to the remaining parcel of land," so that Larry Ramos had "title" to that parcel. Thus, Larry Ramos and Santa Morales Toro had title to 1) the house and the land upon which the house sits by virtue of edification, and 2) the remainder of the parcel containing the house by virtue of a mandate from Castolino Ramos. Sotomayor defined "title" as meaning, "you have the power to encumber the property, to do as you think, as any owner would do." Tr. 587.

III. DISCUSSION

17. Santos Ramos and his wife live at Carretera 327, kilometro 0.3, Barrio La Plata, Lajas, Puerto Rico. Larry Ramos and his wife live next door. The land on which Santos Ramos' and his wife's house sits was "deeded to" the wife by her mother on September 2, 1986. Santos and his wife Carmen have lived together at that property since their marriage in 1978. During their marriage, they built their house upon the land and consider the house to be jointly owned by them. Since Santos' wife owned the land prior to the time their house was built upon that land (Renacer 11S), the house must have been built after 1986. The record does not identify the house that was occupied by Santos and his wife at Carreterra 327, Kilometro 0.3, from the time of their marriage in 1978 until the time their present home was built.

18. Larry Ramos claims an "ownership" interest in the property of Santos Ramos and his wife by virtue of a "mandate" given to him. Santos and his wife both testified that in 1987 they "agreed to convey" to Larry Ramos "a legal ownership interest" in their property "for the purpose of permitting Larry to pledge the property on which we live as collateral security for a bank loan." In Mr. Sotomayor's opinion, this created a mandate i.e., contract, between the parties, which is enforceable in accordance with the laws of Puerto Rico. The right given constituted a "restricted" mandate, meaning that the right is enforceable only for the specific purpose for which it was given. In this case, the mandate given by Santos and Carmen to Larry Ramos was for the purpose of permitting the property to be pledged as collateral security for a loan. Tr. 596. Larry had the right, should either of the granting parties renege on the mandate, to enforce that mandate in court. Tr. 588-9. Sotomayor testified that the enforceable mandate would properly be understood by laymen in Puerto Rico to be an "ownership interest" in the affected property. Tr. 600.

19. Larry Ramos has resided at Carretera 327, Kilometro 0.3, Barrio La Plata, Lajas, Puerto Rico, since 1970. His wife, Santa Morales Toro, has resided with him at that address since their marriage in 1973. Castolino Ramos, Larry's father, resides at the same address although in a separate dwelling.

20. Larry Ramos and Santa Morales Toro both testified that *before* the year 1973, the land and the house in which they now live was owned by Castolino Ramos ("Prior to our residing in our current home, the land on which the house was located and the edifice that then existed was owned by ... Castolino Ramos.") That testimony goes beyond the testimony given by Castolino Ramos regarding his ownership. Castolino testified only that he received deeds to the properties (house and land) in 1977.

21. Castolino, Larry and Santa each testified that Castolino "gave" his house and land to Larry and Santa, but none of them states the time when this gift was made. The gift must have been made sometime in or after the year 1977 when Castolino received deeds to the property. Execution (and, presumably, delivery) of a deed to Santos' wife Carmen in 1986 is claimed by Renacer to have invested her with the ownership of certain land at that time; presumably, Renacer intends to claim that delivery of the deeds to Castolino in 1977 invested him with ownership of his property *at that time*. In that event, Larry and Santa are incorrect about Castolino's earlier ownership.

22. According to Mr. Sotomayor, Larry Ramos and his wife "have a real ownership interest over the edifice built on the land owned by Castolino Ramos." The basis for this conclusion is stated to be "good faith edification" pursuant to Section 1164 of the Civil Code of Puerto Rico. However, Castolino Ramos' property already had a house on it when Castolino "gave the land and the edifice" to Larry and Santa. Aside from the implied assurance of Mr. Sotomayor, there is nothing in this record which makes it clear that this concept of "edification" applies where, as here, mere additions are made to an already existing structure. Mr. Sotomayor's conclusion also does not seem to take due account of the gift of the house and land to Larry and Santa by Castolino. Castolino Ramos did testify that he "gave the land and the" already existing house to "Larry W. Ramos, and his wife, Santa Morales Toro." In making an oral gift of the "land and the edifice," Castolino had the power to do just that and make an effective transfer of ownership, according to Mr. Sotomayor. Tr. 583. Nevertheless, Sotomayor's stated position remains that Larry and Santa gained title to the house not by way of "mandate," but by edification under Section 1164 of the Civil Code of Puerto Rico. It is not understood why, and the matter is nowhere explained on this record, Castolino's gift of the land and the edifice was ineffective as a transfer of the ownership of the edifice. In fact, Sotomayor seems to have gone so far as to say, explicitly, that, Castolino's expressed intention to make a gift notwithstanding, Castolino failed to "give" the "edifice" to Larry and Santa: Larry and Santa received no ownership right in the edifice from Castolino, but merely his "permission" to "construct their house over that land." Tr. 582. Sotomayor gave no clear response to the question whether an ownership interest in the house was *doubly* conveyed, once by Castolino's oral gift and again by "edification." Tr. 583.

23. According to Sotomayor:

> "[Larry and Santa] have been granted a full ownership interest in the property and the building constructed on the property, and they have constructed most of the house in which they live. They thus have a joint interest over the edifice constructed on that land."

In making reference to the "property and the building constructed on the property" here, Sotomayor's use of the word "property" appears to comprehend only the land. He seems to say that Larry and Santa have an ownership interest in the land and the building constructed on that land by virtue of an oral grant. But if that is so, Larry and Santa owned the house and the land on which it sits because they were "orally granted" that interest by Castolino Ramos -- not because of any "edification." Sotomayor also seems to say in the quoted passage, however, that Larry and Santa have a joint interest in the house in which they live *because* they have built upon the land, i.e., "they have constructed most of the house in which they live," meaning "edification."

24. According to Sotomayor, Larry Ramos and his wife gained title to the portion of the land parcel beyond the plot on which the house sits by way of a mandate from Castolino Ramos: "... Castolino... had conveyed a mandate to Larry Ramos with respect to the remaining parcel of land," so that Larry Ramos had "title" to that portion. Thus, Larry Ramos and Santa Morales Toro had title to 1) the house and the land on which the house sits by virtue

of edification; and 2) the remainder of the parcel containing the house by virtue of a mandate from Castolino Ramos. It is difficult to see how edification played any role here. If Castolino "gave" the house (in its earlier version) and the land upon which the house sits to Larry and Santa, Castolino thereafter had no interest in the improved house (that is, the house with the additions made by Larry and Santa) to which the concept of "edification" could attach. It is equally difficult to understand why the gift that Castolino Ramos claims that he made to Larry and Santa did not also carry with it the house and the entire parcel of land including the plot upon which the house sits.

25. Mr. Sotomayor's testimony contains some difficult to reconcile conclusions about the manner in which Larry and Santa came to have their claimed ownership interest in the house where they live: 1) Larry and Santa have an ownership interest in the land and the building constructed on that land by virtue of an oral grant from Castolino Ramos; 2) Larry and Santa "obtained title from [Larry's] father, Castolino Ramos Toro, through good faith edification" (Tr. 581-2); and 3) in making his purported gift of the "land and the edifice" to Larry and Santa, Castolino merely extended his "permission" to "construct their house over that land." Tr. 582. It is nowhere explained how Castolino Ramos could, by his oral mandate, grant *ownership* in the land and building, while at the same time extending merely his *permission* to "build" an already existing house on that very same land.

26. There is no public record of Larry Ramos' claimed interest in any of the properties at either the Treasury Department which collects property taxes or the Registry of Properties for the area where the property is located. According to Mr. Sotomayor, there are two types of real property registration in Puerto Rico. The first is a registration of property for tax exemption purposes. This registration is accomplished at the Treasury Department. The other kind of registration is voluntarily done at the Registry of Properties. This registration becomes necessary only when the property is to be mortgaged. The mortgage lien cannot be recorded[28] if the property has not been registered. Renacer, Ex. 11S. The purpose of registration is to let interested persons know the identity of the holder and his interest in the registered property. Tr. 596-7.

27. The property of Santos Ramos and his wife has not been registered. The property of Castolino Ramos and his wife is registered in their names. According to Mr. Sotomayor, Larry Ramos could, acting on the mandates given to him, bring a legal action to compel Santos Ramos and his wife and Castolino Ramos and his wife, to take the necessary steps, including the registration of Larry Ramos' interests in the properties in his own name, necessary to complete a mortgage to the Cooperativa. The Cooperativa would have the same right as Larry Ramos to legally compel these actions. Tr. 588-590.

IV. CONCLUSIONS

28. In *WHW Enterprises, Inc.* v. *F.C.C.*, 753 F. 2d 1132 (1985), the court was more than "disquieted" by an applicant's claim to own property knowing full well that he lacks legal title to it. To the extent that the applicant controlled the land, the court found, he did so not as a matter of right, but through the grace of others.

29. That is not this case. The conclusion compelled by the evidence in this case is that Larry Ramos held legally enforceable rights in both of the subject properties. One of the properties is "titled" in the names of Castolino Ramos and his wife and the other property is, apparently, not formally titled. Mr. Sotomayor defined "title" as meaning, "you have the right to encumber the property, to do as you think, as any owner would do." Larry Ramos' interests in the properties empowered him to encumber them. Renacer's lender recognized rights to the properties in Larry Ramos. The existence of those rights is confirmed by the testimony of Mr. Sotomayor, insofar as he instructs that the oral grants to Larry Ramos are enforceable under the Puerto Rican legal system. As the holder, or "owner", of those enforceable rights at all times relevant to this proceeding, it cannot be concluded that Larry Ramos misrepresented or lacked candor in any meaningful sense in claiming to "own" the properties in question.

IT IS ORDERED that the Remanded Issue IS RESOLVED in favor of Larry Ramos and Renacer Broadcasters Corporation, and Renacer remains qualified to be a Commission licensee.[29]

FEDERAL COMMUNICATIONS COMMISSION

Edward Luton
Administrative Law Judge

[28] The purpose served by "recordation" of property is not explained on this record.

[29] In the event exceptions are not filed within thirty (30) days after the release of this Supplemental Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective fifty (50) days after its release pursuant to Section 1.276 (d) of the Commission's Rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Atlantic Tele-Network, Inc. File No. I-T-C-90-153

Application for Authority to Acquire and Operate Facilities for Direct Service between the U.S. and Guyana

ORDER ON REVIEW

Adopted: July 1, 1993; Released: July 14, 1993

By the Commission:

I. INTRODUCTION

1. On November 8, 1991, the Chief, Common Carrier Bureau (Bureau), granted the above-captioned application to Atlantic Tele-Network, Inc. (ATN) to lease and operate facilities for the provision of switched services between the United States and Guyana, subject to a number of conditions.[1] ATN filed an application for review of the *Bureau ATN Order*, arguing that the conditions imposed by the Bureau were unlawful and contrary to Commission policy. In particular, ATN objects to the requirement that it conform with the Commission's policy requiring proportionate allocation of return traffic. For the reasons stated below, we deny ATN's application for review and affirm the Bureau's Order.

II. BACKGROUND

2. In July 1990, ATN, a Delaware corporation, filed an application to provide voice, record and/or data communications between the United States and Guyana. Under its proposal to offer service to Guyana, ATN maintained that the Guyana Telephone and Telegraph Company (GT&T) would route to AT&T the existing level of return traffic and route to ATN all growth traffic attributable to ATN's investment in GT&T's on-going capital improvements program.[2] GT&T is the sole provider of local telephone service in Guyana. ATN stated in its application that American Telephone and Telegraph Company (AT&T) was currently the only provider of international communications in Guyana and, therefore, grant of its application would permit new entry and increase competition. ATN maintained that it would abide by the same conditions that were imposed upon ATN's subsidiaries, Atlantic Tele-Network Company and Puerto Rico Telecom Inc., in their authorizations to furnish international services.[3] ATN also requested that it be classified as a nondominant carrier under the Commission's *Competitive Carrier* and *International Competitive Carrier* decisions.[4]

3. The Application was placed on public notice and no comments were received. After the comment period lapsed, ATN informed the Commission that it was to acquire an eighty percent interest in GT&T. AT&T then filed a letter with the Commission in which it asked the Commission to classify ATN as a dominant carrier to permit the Commission to address any adverse effects on U.S. policy that may result from preferential arrangements between ATN and GT&T. AT&T also requested that ATN, in its relationship with GT&T, be required to adhere to the principles of proportionate return traffic.[5] MCI, which initially did not object to ATN's application, filed letters with the Commission on June 28,1991, and August 8, 1991, stating that, because MCI was not having any success in negotiating an operating agreement with GT&T, ATN's application should only be granted if appropriately conditioned to prevent anticompetitive conduct.

4. The Bureau determined that ATN, through its controlling interest in GT&T, has exclusive control over bottleneck facilities in Guyana. The Bureau was concerned that ATN could abuse this position to exclude new entrants and to engage in discriminatory practices to the detriment of competing U.S. carriers. Therefore, while the Bureau granted ATN's Section 214 application to permit it to lease and operate facilities for the provision of switched services between the United States and Guyana, the authorization was subject to many of the conditions we impose on dominant foreign-owned international carriers. In particular, these include the requirements that ATN seek specific Section 214 authorizations for activation of additional circuits; file quarterly revenue and traffic reports for service between the U.S. and Guyana; and file copies of any operating agreements entered into by ATN, or its parent/affiliates,

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[1] Order, Authorization and Certificate, 6 FCC Rcd 6529 (1991) (*Bureau ATN Order*).

[2] ATN intends to maintain this allocation plan during its five-year modernization effort. According to ATN, if GT&T enters into any operating agreements with other U.S. carriers during this time, AT&T's return traffic allocation would be divided proportionately among the U.S. carriers based upon their share of southbound traffic. Finally, ATN states that it intends to maintain the current U.S.-Guyana accounting rates and to continue charging collection rates equal to or lower than AT&T's current collection rates in the U.S. *ATN Application for Review*, at 6.

[3] Atlantic Tele-Network Company was authorized to provide international voice service between the U.S. Virgin Islands and various overseas points. *Atlantic Tele-Network Company*, 4 FCC Rcd 8302 (1989). Puerto Rico Tele-Com, Inc. was authorized to provide international switched voice services between the United States, including Puerto Rico, and various overseas points. *Puerto Rico Tele-Com, Inc.*, 5 FCC Rcd 3431 (1990), *erratum*, 5 FCC Rcd 3738 (1990). Both subsidiaries were authorized to operate as international resale carriers.

[4] *Id.* at n.4, 5.

[5] *Bureau ATN Order*, 6 FCC Rcd 6529. Under proportionate return, each U.S. carrier is obligated to accept an allocation of return traffic (traffic to the U.S.) based on the carrier's proportional share of traffic into the foreign country. The Commission views disproportionate return as a form of whipsawing because a foreign monopoly carrier could favor one U.S. carrier over all others in the distribution of return traffic, which generates increased settlement payments for the favored U.S. carrier. *Regulation of International Accounting Rates*, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 90-337, Phase II, 7 FCC Rcd 8040, 8045-46. (*Phase II-Report and Order*). Here, while the carrier is a U.S. carrier, our concern is the same because of ATN's monopoly control over GT&T. *See also* para. 10, *infra*.

that affect traffic and revenue flows to or from the U.S. In addition, the Bureau required ATN to accept only its proportionate share of return traffic from Guyana, including its share of the growth traffic, and prohibited it from entering into any exclusive arrangements for the interchange of traffic to or from the United States.[6]

III. PARTIES' CONTENTIONS

5. ATN objects to the Bureau's determination that ATN must accept only a proportionate allocation of return traffic. ATN also objects to the Bureau's decision to impose on ATN certain other nondiscrimination conditions which, ATN argues, go beyond those customarily imposed on U.S. carriers for the provision of international services. ATN further contends that its investment in the infrastructure of the Guyana telephone system entitles it to receive a disproportionate share of return traffic and that, in general, the *Bureau ATN Order* will discourage U.S. companies from investing abroad. For relief, ATN asks that the Commission only impose those conditions that are usually imposed upon U.S. carriers providing international switched services.

6. Specifically, ATN contends that the Bureau erred in applying the policy of proportionate return to ATN, arguing that the Commission has never formally adopted such a policy. According to ATN, the Commission erred in (stating in the Report and Order in *Regulation of International Accounting Rates*[7] that proportionate return was a longstanding U.S. regulatory policy. ATN maintains, therefore, that the Bureau cannot rely on such a policy in its Order.

7. ATN also disputes the Bureau's conclusion that ATN will possess market power due to its ownership interest in GT&T. ATN maintains that AT&T has the true market power in Guyana by virtue of GT&T's dependence on AT&T for foreign currency. ATN further argues that its commitment to improve Guyana's telecommunications infrastructure should preclude the Commission from requiring proportionate return as a condition of its operating authority. ATN also asserts that imposition of the policy will create a barrier to entry into the market for U.S.-originated switched international traffic. ATN maintains that if the Bureau's Order is affirmed, competition in the market will be limited to major domestic 1+ carriers, such as MCI, AT&T, and US Sprint, which have the financial resources to enter the domestic 1+ market on a nation-wide basis. The result would be that small carriers, such as ATN, would be precluded from full participation in the market because they would have little, if any, southbound traffic.

8. On November 27, 1992, the Commission released its decision in *Phase II-Report and Order* of Docket No. 90-377, n.5 *supra*. In January, ATN filed in this proceeding supplemental comments addressing that *Phase II* decision.[8] ATN maintains that, in the *Phase II Report and Order*, the Commission adopted a policy of requiring U.S. carriers to accept only their proportionate share of return traffic in order to protect U.S. international carriers against whipsawing. ATN argues that the proportionate return policy is not applicable to its service to Guyana because AT&T has been the only U.S. carrier serving the U.S.-Guyana route, and therefore whipsawing is not possible. If other U.S. carriers sign operating agreements with GT&T, ATN claims its proportionate return proposal, as described in para. 2, *supra*, would prevent any whipsawing from occurring in the future. According to ATN, whipsawing can only occur if GT&T attempts to alter the allocation of return traffic in the future as a lever to extract concessions from U.S. carriers; ATN represents that GT&T will adhere to ATN's allocation proposal if the Commission approves it. As an additional safeguard against whipsawing, ATN states that it is willing to have the Commission condition ATN's Section 214 authorization on ATN's adherence to its return traffic proposal. Finally, ATN claims that the Bureau declined to act on its proposal in the *Bureau ATN Order* and requests that the Commission do so in the application for review.

9. AT&T and MCI Telecommunications Corporation, Inc. (MCI) filed oppositions to the application for review. MCI also filed a pleading opposing ATN's supplemental comments and AT&T filed a reply in support of MCI's opposition. They maintain that the Commission has adopted a proportionate allocation of return traffic policy and that the Bureau correctly applied it here. They also dispute ATN's claim that its investment in Guyana entitles it to receive a disproportionate amount of return traffic. In addition, MCI states that GT&T continues to refuse to enter into an operating agreement with MCI for direct service between the U.S. and Guyana. Both commenters assert that the Bureau correctly conditioned ATN's authorization to protect the public from potential anticompetitive activity and to promote competition and lower rates for U.S. consumers. MCI maintains that the *Phase II-Report and Order* did not establish or alter the Commission's proportionate return policy, which was already in existence at the time the *Bureau ATN Order* was adopted and therefore does not affect the outcome of ATN's application for review. If ATN is permitted to deviate from this policy, MCI claims, ATN could effectively control the entire U.S.-Guyana telecommunications market.

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[6] The Commission recently codified the prohibition against exclusive arrangements in the Report and Order in CC Docket No. 91-360 and, effective March 8, 1993, applied it to U.S. carriers that are affiliated with foreign carriers within the meaning of that Order. *Regulation of International Common Carrier Services*, 7 FCC Rcd 7331 (1992) (*International Services*). The Bureau also imposed on ATN the same conditions we impose on all Section 214 authorizations for the provision of international services, specifically, the requirement to file a tariff pursuant to Section 203 of the Communications Act and Part 61 of the Commission's Rules and the requirement to file annual reports of overseas traffic pursuant to Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61. *Bureau ATN Order, supra* at 6532.

[7] *Regulation of International Accounting Rates*, Phase I, Report and Order, CC Docket No. 90-337, 6 FCC Rcd 3552, 3554 (1991) (*Phase I - Report and Order*).

[8] We accept ATN's supplemental comments, as well as MCI's opposition to these comments, AT&T's reply in support of MCI's opposition and ATN's reply, in the interest of compiling a complete record in this proceeding.

IV. DISCUSSION

10. We find that the Bureau properly imposed conditions on the grant of ATN's Section 214 authorization. As explained below, the Commission had a proportionate allocation of return traffic policy in effect at the time the Bureau adopted its order, and we recently reaffirmed this policy in *Phase II-Report and Order, supra,* n.5 and *Telefonica Larga Distancia de Puerto Rico*,[9] In addition, the imposition of certain nondiscrimination conditions, including the prohibition against accepting exclusive arrangements, is necessary to guard against anticompetitive conduct by a U.S. carrier with a majority interest in a foreign carrier with monopoly control over essential facilities. We also find that ATN's investment in GT&T does not justify a deviation from our proportionate return policy, or modification of the other conditions imposed.

11. The Commission first adopted the proportionate return policy in the 1930s to prevent whipsawing of U.S. carriers by foreign entities who had the ability to use their monopolistic bargaining positions to play one U.S. carrier against another and unfairly gain favorable terms and conditions in operating agreements.[10] The Commission has historically viewed the misallocation of return traffic as a prime example of such abuse by foreign entities.[11] The Commission's concern with proportionate return also stems from the recognition that the flow of return traffic has a direct impact on the effective settlement rate paid by each U.S. carrier and therefore the profit margin of each carrier's competing international service. The ability of a U.S. carrier to offer competitive rates to U.S. consumers is directly affected by deviations from proportionate allocation of return traffic.[12]

12. Moreover, ATN mischaracterizes the Bureau's decision regarding our proportionate return policy. The Bureau clearly stated that proportionate return was an existing Commission policy,[13] but deferred ATN's argument that its investment in the Guyana telephone system entitles it to greater than proportionate return to the *Phase II* proceeding (CC Docket No. 90-337), where the general issue had been raised.[14] Furthermore, we do not agree with ATN's argument that, because the Commission did not resolve the issue of proportionate return in *Regulatory Policies and International Telecommunications*,[15] the policy did not exist. That proceeding considered an international model for preventing whipsawing that included our proportionate return policy; the fact that the proposed model ultimately was not adopted did not imply that the proportionate return policy did not exist. Indeed, the continued applicability of the policy is demonstrated by the Commission's reference to the policy in other subsequent proceedings. For example, in the *Phase I - Report and Order,* the Commission required that each request for an accounting rate modification be accompanied by a sworn affidavit disclosing whether deviation from the principle of proportionate return is contemplated.[16] Regardless, even assuming no formal policy existed at the time the condition was imposed, it was well within the Bureau's discretion to impose such a proportionate return requirement as part of its public interest analysis. Furthermore, despite what ATN believed was the Commission's policy regarding proportionate return at the time of the *Bureau ATN Order,* the policy was recently formally articulated. In its *Second Report and Order* in Phase II of Docket 90-337, the Commission confirmed its commitment to this policy, stating that ". . . we will continue to require that U.S. international carriers accept only their proportionate share of return traffic."[17] The Commission further stated that proportionate return is the major protection for U.S. carriers against whipsawing by foreign carriers. Therefore, it is clearly appropriate for the Commission on review to require such a condition on ATN's Section 214 authorization.[18]

13. We accordingly affirm the Bureau's conclusion that our proportionate return policy should apply to ATN and its affiliate GT&T, and we reject ATN's proposal to deviate from our policy. The record indicates that GT&T's market power in Guyana gives it the ability to discriminate against competing U.S carriers, and provides no basis for us to conclude that any deviation from our policies should be granted in this context. Contrary to ATN's assertion that whipsawing would not occur on the U.S.-Guyana route, we believe that ATN's majority interest in GT&T, the monopoly carrier in Guyana, gives ATN both the ability and incentive to engage in the very anticompetitive conduct that gave rise to our proportionate return policy. We also note that if we were to approve ATN's proposal, ATN would benefit disproportionately from the above-cost accounting rate imposed by GT&T.[19] We thus believe that neither ATN's representation that it will not engage in whipsawing even if other U.S. carriers enter the market nor its offer to have us condition its authorization on GT&T's adherence to its proposed allocation scheme are sufficient to justify permitting ATN to deviate from our proportionate return policy. Therefore, we reject ATN's proposal to deviate from our proportionate return policy

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[9] 8 FCC Rcd 106 (1992)(*Telefonica). See, infra* at para. 15 for a discussion of *Telefonica.*

[10] *See Mackay Radio and Telegraph Co.,* 2 FCC 592 (1936); *aff'd en banc,* 4 FCC 150 (1937), *aff'd sub nom . Mackay Radio and Telegraph Co. v. FCC,* 97 F. 2d 641 (D.C. Cir. 1938).

[11] *See Mackay Radio and Telegraph Co., supra; Western Union Telegraph Co.,* 2 FCC Rcd 118 (1986).

[12] *See, e.g., American Telephone and Telegraph Co.,* 2 FCC Rcd 6409, 6410 (Com. Car. Bur. 1987).

[13] *Bureau ATN Order,* 6 FCC Rcd at 6532.

[14] *See infra* paras. 16-17.

[15] *Notice of Inquiry and Proposed Rulemaking,* CC Docket No. 86-494, 2 FCC Rcd 1022, 1027 (1987); *Order and Supplemental Notice,* 4 FCC Rcd 7387, 7433-34 (1989); *Order on Recon.,* 4 FCC Rcd 323 (1989).

[16] *Phase I Report and Order, supra* at 3554. The Commission also followed this policy in *Western Union Telegraph Co.,* 2 FCC Rcd 118 (1986); *US Sprint,* 3 FCC Rcd 1484 (1988).

[17] *Phase II - Report and Order,* 7 FCC Rcd at 8045.

[18] *Id.* at 8046.

[19] In May 1991, we directed U.S. carriers to negotiate lower, cost-based accounting rates. *See Phase I - Report and Order, supra* n.7. In November 1992, we established negotiating benchmark settlement rate ranges of $.23 - .39 for Europe and $.39 - .60 for Asia and other regions, including Latin America. With respect to Latin America and other developing regions, we noted that we expected countries within these regions to reduce their accounting rates over a period of one to five years, consistent with CCITT Recommendation D. 140, approved in October 1992, which established the principle of cost-oriented and nondiscriminatory accounting rates. *Phase II Report and Order,* 7 FCC Rcd at 8043. The current U.S.- Guyana accounting rate of $1.70 per minute has not been changed since 1987 and is well above the benchmark rates.

and reaffirm that it is in the public interest for us to assure that U.S. carriers, including ATN, receive only their proportionate share of return traffic.[20]

14. We additionally reject ATN's argument that we should remove from its Section 214 authorization the other nondiscrimination safeguards imposed by the Bureau. This Commission has ample authority, pursuant to Section 214 of the Act, to impose conditions on authorizations to prevent anticompetitive conduct, such as the disproportionate allocation of return traffic and the negotiation of exclusive arrangements. Given ATN's ownership of the monopoly provider in Guyana and its proposal to deviate from our proportionate return policy, as well as MCI's allegation that it is experiencing difficulty in negotiating an operating agreement with ATN, we are satisfied that the conditions imposed by the Bureau are necessary. Moreover, we note that, under the recent modification of our dominant carrier policy in *International Services* , ATN is presumptively classified as dominant because it is a U.S. international carrier affiliated with a foreign carrier that has monopoly control in the destination market.[21] The burden of proof is on the affected carrier to rebut that presumption. We anticipate that, unless ATN can rebut the presumption, it will remain a dominant U.S. international carrier, subject to all relevant regulations (most of which are consistent with those applied in the *Bureau ATN Order),* including the prohibition from accepting special concessions from any foreign carrier or administration.[22]

15. We also note that, while this application for review was pending, the Commission adopted an order granting the acquisition of assets of Telefonica Larga Distancia de Puerto Rico (TLD) by LD Acquisition Corporation (LD), subject to the same conditions the Bureau imposed on ATN in its provision of service to Guyana, including the condition that LD adhere to our policy of proportionate allocation of return traffic and that it not accept special concessions from any foreign carrier or administration.[23] LD, through a series of subsidiary ownership relationships, is owned by Telefonica de Espana (Telefonica), S.A., Spain's government-controlled monopoly telephone company.[24] As a result, we found that Telefonica has the opportunity and incentive to discriminate against U.S. carriers, and conditions were imposed to prevent such discrimination. *Id.* ATN's interest in GT&T presents a similar situation--a U.S. carrier is under common control with a foreign carrier which has monopoly control over facilities required by U.S. carriers to terminate U.S.-originating traffic. Moreover, in this instance there are allegations of discriminatory actions towards a U.S. carrier, MCI.[25] A carrier with monopoly control over bottleneck facilities is in a position to whipsaw and otherwise discriminate against competing carriers. We believe that the appropriate means of controlling the potential abuse of foreign market power in the instant case is to follow the approach taken in *Telefonica* and retain the conditions the Bureau applied to ATN's Section 214 authorization.[26]

16. ATN also argues that its privatization initiative in Guyana supports U.S. trade policies and that the imposition of numerous conditions on ATN's operations in Guyana will discourage other U.S. companies from making substantial overseas investments. ATN made a similar argument in the comments it filed in response to the Notice of Proposed Rulemaking in the *International Services* proceeding (CC Docket No. 91-360)[27] and in comments filed in Phase II of CC Docket No. 90-337. The Commission rejected ATN's arguments in Phase II of CC Docket No. 90-337. In the *Phase II Report and Order,* we agreed with ATN that a deviation from our international settlements policies (which include proportionate return) might help developing countries improve their network infrastructure, but found that any such deviation would not serve the public interest overall because these policies are necessary to further our goals of preventing discrimination against U.S. carriers and reducing the net settlements deficit.[28]

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[20] *See generally, Phase I - Report and Order, supra; Phase II - Report and Order, supra; Implementation and Scope of the Uniform Settlements Policy,* Report and Order, 59 R.R. 982 (1986), *Order on recon.,* 2 FCC Rcd 1118 (1987).

[21] ATN did not qualify as a foreign-owned -- and therefore dominant -- carrier under our former rules. However, under our modified rules, the determining factor for a carrier to be treated as dominant is the existence of an affiliation between a U.S. carrier and a foreign carrier that has the ability and incentive to discriminate against unaffiliated U.S. carriers in their provision of U.S. international service to the foreign carrier's home market. *See generally International Services, supra.* The record in this proceeding supports the conclusion that we have such an affiliation between the U.S. carrier ATN and GT&T. We do not agree with ATN that AT&T's role in providing GT&T with hard currency in the settlements process overcomes the presumption that a foreign monopoly provider has the ability to discriminate against unaffiliated U.S. carriers. *Id.* at 7334.

[22] *See International Services,* 7 FCC Rcd at 7335.

[23] *Telefonica,* 8 FCC Rcd at 111.

[24] The kingdom of Spain owns 34.9 percent of the outstanding ordinary shares of Telefonica. *Telefonica,* 8 FCC Rcd at n.4.

[25] We acknowledge ATN's stated intention to continue negotiating in good faith with MCI and other U.S. carriers for operating agreements. We also acknowledge ATN's argument that by presenting its return traffic proposal to the Commission for approval, it demonstrated its desire to work cooperatively and openly with the Commission. Despite these commitments, we believe the public interest requires the imposition of the nondiscrimination safeguards adopted by the Bureau to prevent potential abuses due to ATN's affiliation with GT&T.

[26] We do not believe that the three-year review mandated in the *Telefonica* Order is required in this case because of the relatively small amount of traffic at issue here. We emphasize, however, that we specifically reserve the right to impose additional conditions on this authorization if we determine such action is necessary in the future.

[27] In the CC Docket No. 91-360 proceeding, the Department of Justice stated "[a]s desirable as it may be for foreign nations to modernize their telecommunications facilities, the Department cannot agree that giving one United States carrier a monopoly of international communications between the United States and a foreign nation where it has purchased the sole telecommunications carrier is an appropriate means of financing modernization." Reply Comments of U.S. Department of Justice at 7 n.11, filed March 24, 1992. As discussed in para. 17, we agree with this view. *See also, International Services,* 7 FCC Rcd at 7334, n.39 (Commission noted that ATN raised many of the same issues in the *International Services* proceeding that it raised in its Application for Review of the *Bureau's ATN Order,* and that we would address ATN's arguments in this proceeding).

[28] *Phase II - Report and Order,* 7 FCC Rcd at 8045-46. We also noted in that Order that some foreign countries are moving toward introducing facilities-based competition for international services, and ask for further comment on whether allowing some flexibility in our nondiscriminatory accounting rate, division of tolls, or proportionate return policies might be an

17. Thus, although we support privatization initiatives such as this effort in Guyana, we believe that ATN's investment in Guyana's telephone system does not warrant special treatment for ATN given the potential for anticompetitive conduct presented by GT&T's monopoly position in Guyana. We accordingly conclude that ATN does not justify its proposal to deviate from our policy of proportionate return or its request that we modify the other nondiscrimination safeguards imposed in the *Bureau ATN Order*.

18. For the reasons detailed above, we find ATN's arguments in support of its application for review to be without merit and hereby affirm the Bureau's Order.[29]

V. ORDERING CLAUSE

19. Accordingly, IT IS ORDERED, that the Application for Review filed by Atlantic Tele-Network, Inc. of the Bureau's Order in Atlantic Tele-Network, Inc., Application for Authority to Acquire and Operate Facilities for Direct Service between the U.S. and Guyana, IS DENIED and the Bureau's action is AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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appropriate means of achieving lower accounting rates as facilities-based competition is introduced in foreign countries. *Id.* at 7 FCC Rcd at 8046.

[29] As a result, we regard as moot ATN's argument that the Bureau exceeded its delegated authority.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MW TV, Inc. File No. 91290

For Authority to Construct and
Operate a New Station in the
Private Operational-Fixed
Microwave Service

MEMORANDUM OPINION AND ORDER

Adopted: June 4, 1993; Released: July 15, 1993

By the Commission:

1. MW TV, Inc. seeks review of a Private Radio Bureau action dismissing its application for a new H-Channel station authorization in the Private Operational-Fixed Microwave Service (OFS). The Bureau dismissed the MW TV application on the grounds of conflict with an existing station.[1] MW TV faults this action, claiming that it violates applicable rules and regulations.

2. The MW TV application was filed with the Commission on August 1, 1991. In an exhibit to the application, MW TV's board chairman and treasurer declared that a station had been authorized for this same channel on July 31, 1990, but that the station had not been constructed and was not operational. The Bureau nonetheless dismissed the application for failure to protect the existing station, citing internal administrative processes. Under applicable procedures, the Bureau stated, cancelled OFS frequencies are not available for reassignment until placed on a Public Notice to that effect.[2]

3. MW TV asserts that this procedure conflicts with two Commission Rules: Section 94.51(a),[3] which provides that OFS stations must be placed in operation within 12 months of the grant date or the authorization cancels automatically, and Section 1.227(b)(3),[4] which establishes a one-day filing window for OFS applications. MW TV argues, in essence, that cancellation is both automatic and instantaneous and that it, as an alert observer, is entitled to take advantage of the one-day filing window to secure a new authorization before others may be aware of its availability.

4. Our rules do not operate in this manner, however. To assure that licensing processes function smoothly, we consider applications for an encumbered channel only after we have formally announced its availability by Public Notice. In this way, we are able to satisfy ourselves that the license has, in fact, cancelled automatically and, if we confirm cancellation, all prospective applicants are provided with an equal opportunity to seek the recovered frequencies.[5] It is not at all uncommon for licensees to challenge assertions that they have failed to construct and place their channels in operation. When this occurs, we must first resolve the factual dispute and then determine the status of the channels. Were we to accept applications pending completion of this resolution, Commission and applicant resources would be wasted in the preparation and processing of applications for channels that were not, ultimately, available for assignment. Thus, we avoid making premature assignments that would later have to be rescinded. In summary, licenses cancel automatically on failure to construct and place in operation, and later become available for reassignment when this cancellation receives administrative affirmation via Public Notice.[6] There is no conflict between these two propositions.

5. We conclude in light of the above that the application was properly dismissed. Accordingly, IT IS ORDERED that the application for review filed by MW TV, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[1] The application was dismissed by letter of October 1, 1991, from Michael B. Hayden, Chief, Microwave Branch, Licensing Division. Reconsideration of this action was denied by letter of March 13, 1992, from W. Riley Hollingsworth, Deputy Chief, Licensing Division.

[2] These procedures are set forth in the Public Notice, Application Procedures for Recovered Frequencies in the Private Operational-Fixed Radio Service, Mimeo No. 5249, June 19, 1986 (Private Radio Bureau).

[3] 47 C.F.R. § 94.51(a).

[4] 47 C.F.R. § 1.227(b)(3).

[5] *See*, Report and Order, PR Docket No. 90-481, 6 FCC Rcd 7297, 7300-7302 (1991), for a discussion of reinstatement and deletion policies in the private land mobile radio services. The same general concerns and considerations govern our OFS policies.

[6] On May 17, 1993, MW TV filed a supplement to its Application for Review asserting that a recent decision by the United States Court of Appeals for the D.C. Circuit supports reinstatement of its application. *See* McElroy Electronics Corporation v. FCC, No. 91-1545 (D.C. Cir. April 23, 1993) ("*McElroy*"). In *McElroy* the court held that our Rules and associated proceedings could fairly be read to permit filing of new applications to provide cellular service to unserved areas immediately after expiration of a designated five year period. MW TV differs significantly from *McElroy*. First, 47 C.F.R. § 94.51(a) merely indicates the conditions under which a microwave license cancels automatically. Neither a right to file a new license application, nor a date for acceptance of such new filings is provided in this rule. Second, unlike *McElroy* which deals with applying to provide entirely new service, MW TV involves the re-assignment of channels previously authorized to another licensee. Before we reassign previously licensed channels, we must confirm that cancellation of the license has actually occurred both to protect the rights of incumbent licensees and to ensure the integrity of our administrative processes. Our procedures, as delineated in the 1986 Public Notice, enable us to achieve these purposes. Finally, 47 C.F.R. § 1.227(b)(3) establishes a one-day filing window for OFS applications, but does not address the question of when applications for use of OFS frequencies may be filed.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-1331 **Released: July 15, 1993**

RADIATION HAZARD STUDY FOR DOMESTIC SATELLITE EARTH STATIONS

This Public Notice is intended to provide guidance for applicants who are required to prepare a radiation hazard study. When applying for a license to construct and operate, modify, or renew an earth station, licensees must certify whether grant of the application will have a significant environmental impact as defined in Section 1.1307 of the Commission's rules, 47 C.F.R. 1.1307. In order to make a proper certification with respect to radiofrequency radiation levels (Section 1.1307(b)), a transmitting earth station applicant must prepare a radiation hazard study in advance of filing its application. The reference document for performing the study is OST Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," October 1985.

A thorough radiation hazard study should consider the effects of multiple carriers by including the maximum number of carriers transmitted at any time and the maximum transmitted power of each carrier. If the radiation hazard study indicates a potential hazard in one or more of the regions around the antenna, the station operator should be aware of the hazard and the area(s) should remain inaccessible to the public and operating personnel. The easiest ways to control exposure and ensure compliance are by: (1) fencing and roping off areas where RF fields may exceed the standard, (2) posting RF radiation danger signs around the unit, (3) restricting the time that the public or operating personnel may access such areas, (4) reducing or turning off power when personnel must have access to such areas, or (5) other appropriate control procedures. Refer to Public Notices Report No. DS-1231 released September 29, 1992 and Report No. DS-1290 released March 10, 1993 for additional radiation evaluation guidelines.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-207

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Riverside,
California, in the Los Angeles-
San Bernardino-Corona-Fontana,
California, Television Market

NOTICE OF PROPOSED RULE MAKING

Adopted: July 2, 1993; Released: July 15, 1993

Comment Date: August 18, 1993
Reply Comment Date: September 2, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is a petition for rule making filed May 5, 1993, by Fouce Amusement Enterprises, Inc. ("Fouce"), licensee of television station KRCA(TV), Channel 62 (Independent), Riverside, California. Fouce seeks to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California, television market to "Los Angeles-San Bernardino-Corona-Fontana-Riverside, California."[1]

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. *See* 47 CFR §76.658(m) and 17 U.S.C. §111(f). Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. *See CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. *See Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."[2]

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),[3] which amended Section 614 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. *See* Section 614(f) of the Act.[4] The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

THE PETITION

5. Fouce maintains that amendment of Section 76.51 of the Rules to include the community of Riverside as a designated community in the subject television market is warranted on an "emergency basis" to avoid "discriminatory and irrational" application of the must-carry rules to the immediate and severe detriment of KRCA. Fouce states that there can be no question that Riverside is part of the Los Angeles market.[5] It notes that Riverside is approximately the same distance from the center of Los Angeles as

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[1] The Commission has delegated to the Chief, Mass Media Bureau, authority to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." *See Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

[2] *See, e.g., TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), *citing Major Television Markets (Fresno-Vidalia, California)*, 57 RR 2d 1122, 1124 (1985). *See, also, Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

[3] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[4] In connection with the implementation of the broadcast signal carriage provisions of the Cable Act, the Commission concluded that a major update of Section 76.51 was not necessary based on the record then before it. Nevertheless, the Commission did make some minor revisions to Section 76.51 of the Rules, and announced that it would consider further revisions to the list of television markets on a case-by-case basis. *See Report and Order* in MM Docket No. 92-259, *supra*.

[5] Fouce states that because KRCA was not in operation in 1972 when the Section 76.51 market designations were determined, Riverside could not have been considered for inclusion as a designated community in the market. It maintains that the facts

San Bernardino, Corona and Fontana, the other designated communities of the market as listed in Section 76.51. Fouce also states that the community of Riverside is virtually surrounded by San Bernardino, Corona and Fontana -- in fact, Riverside's 35-mile exclusivity protection zone is virtually encompassed within the combined 35-mile zones of San Bernardino, Corona and Fontana, resulting in the anomaly of a smaller television market being wholly contained within a major market. Fouce maintains that KRCA's Grade B signal contour completely encompasses all of the designated communities in the market, and that the station provides city grade service to Los Angeles. Because the stations licensed to the listed communities also provide Grade B service throughout the market,[6] Fouce asserts that KRCA competes for audience and revenue in virtually the same area as the Los Angeles, San Bernardino, Corona and Fontana stations.

6. Fouce alleges that despite KRCA's competitive position in the market, because Riverside is not a designated community in the Section 76.51 market listings, the station is not considered a "local signal" for copyright purposes throughout the Los Angeles ADI in which it competes. While stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market, Fouce states that the absence of Riverside as a designated community in this market list results in KRCA's classification as a "distant signal" for market-area cable systems more than 35 miles from Riverside, including significant portions of Los Angeles and the San Fernando valley. In this regard, Fouce states that it has received notices from various cable systems within the Los Angeles ADI advising that, pursuant to Section 76.58(d) of the Commission's Rules, they will not provide mandatory carriage of KRCA unless the station agrees to reimburse over two million dollars annually in copyright royalty fees.[7]

7. Fouce further contends that KRCA will be at a severe competitive disadvantage unless accorded the same mandatory carriage status as the other stations licensed to communities in the subject hyphenated market. It states that the fact that KRCA is an independent station increases its competitive burden -- unlike other independent stations in the hyphenated market entitled to mandatory carriage, KRCA cannot assure program owners and advertisers of access to the entire market, which it serves over the air but needs cable carriage to reach effectively. In that regard, Fouce states that terrain features of the area make over-the-air reception difficult in various heavily populated portions of the market, necessitating cable carriage to gain equal access to viewers enjoyed by other area stations.

8. Fouce also alleges that the factors previously considered by the Commission in evaluating proposed amendments to Section 76.51 compel inclusion of Riverside in the Los Angeles hyphenated market. For example, it notes that Riverside is closer to the center of Los Angeles than is the designated community of San Bernardino. In addition, Fouce maintains that KRCA's market will not be expanded to any significant degree, as the station's Grade B signal contour is similar to the Grade B contours of the other stations in the hyphenated market and "already extends beyond Los Angeles to the approximate limits of its 35-mile zone." Fouce states that the severe economic disadvantage it would be forced to operate under demonstrates the particularized need for redesignation of the market as proposed, and maintains that the public will substantially benefit by assured access to KRCA's independent, foreign-language and minority programming. Therefore, it asserts that redesignation of the market as proposed will not only place KRCA on a level playing field with its competitors, but will also comport with the goal of assuring that local stations have access to cable subscribers and that subscribers have access to all stations in a television market.

DISCUSSION

9. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that KRCA and stations licensed to communities in the Los Angeles-San Bernardino-Corona-Fontana television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Fouce's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

ADMINISTRATIVE MATTERS

Ex Parte Rules -- Non-Restricted Proceeding

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 18, 1993,** and reply comments on or before **September 2, 1993.** All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting

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presented here would have resulted in the designation of Riverside as part of the Los Angeles hyphenated market when the major market list was established.

[6] Fouce notes that KRCA's transmitter is located at the same Sunset Ridge site as those of KSCI and KZKI, both licensed to San Bernardino.

[7] Section 76.58(d) of the Commission's Rules required a cable operator to notify all local television stations by May 3, 1993, that they may not be entitled to mandatory carriage on the system because such carriage may cause an increased copyright liability to the cable system. Under the provisions of Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. *See Report and Order* in MM Docket No. 92-259, 8 FCC Rcd at 2973-74.

comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making,* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

13. For additional information on this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-212

In the Matter of

Amendment of Section 76.51
of the Commission's Rules
to Include Goldsboro,
North Carolina, in the Raleigh-
Durham, North Carolina,
Television Market

NOTICE OF PROPOSED RULE MAKING

Adopted: July 8, 1993; Released: July 15, 1993

Comment Date: August 23, 1993
Reply Comment Date: September 7, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is a petition for rule making filed March 9, 1993, by Group H Broadcasting Corporation ("Group H"), licensee of television station WYED(TV), Channel 17 (Independent), Goldsboro, North Carolina. Group H seeks to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Raleigh-Durham, North Carolina, television market to "Raleigh-Durham-Goldsboro, North Carolina."[1]

BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. *See* 47 CFR §76.658(m) and 17 U.S.C. §111(f). Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. *See CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. *See Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."[2]

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),[3] which amended Section 614 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. *See* Section 614(f) of the Act.[4] The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

THE PETITION

5. In its petition, Group H contends that the current "Raleigh-Durham" market designation does not reflect the reality of the television market in that area and that adoption of the designation "Raleigh-Durham-Goldsboro" will facilitate equal competition among the local television stations with regard to cable television carriage and syndicated exclusivity and will assure that cable subscribers have access to all stations in the market. According to Group H, absent the requested amendment of Section 76.51, WYED will face inequitable application of compulsory copyright license liability because it is not considered a "local" station. That is, until and unless 76.51 is amended, a cable system will have to pay significant copyright royalties if it

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[1] The Commission has delegated to the Chief, Mass Media Bureau, authority to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." *See Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

[2] *See, e.g., TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), *citing Major Television Markets (Fresno-Vidalia, California)*, 57 RR 2d 1122, 1124 (1985). *See, also, Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

[3] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[4] In connection with the implementation of the broadcast signal carriage provisions of the Cable Act, the Commission concluded that a major update of Section 76.51 was not necessary based on the record then before it. Nevertheless, the Commission did make some minor revisions to Section 76.51 of the Rules, and announced that it would consider further revisions to the list of television markets on a case-by-case basis. *See Report and Order* in MM Docket No. 92-259, *supra*.

wants to carry WYED, and WYED will have to indemnify the cable system for those royalties, placing the station at a competitive disadvantage to other area stations.

6. In support of its proposal, Group H states that it meets all of the criteria delineated by the Commission for redesignation of the Raleigh-Durham market to include Goldsboro. Group H maintains that even though Goldsboro is approximately 51 miles from Raleigh, it serves substantially the same geographic areas as the stations in Raleigh and Durham. Group H states that its transmitter site is within 7 miles of three of the four stations licensed to Raleigh or Durham. Further, Group H contends that WYED's signal covers virtually all of the areas served by the other stations. Specifically, Group H claims that WYED places a city-grade signal over all of Raleigh and most of Durham, a Grade A signal over both Raleigh and Durham, and a Grade B signal over a majority of the Raleigh-Durham market, while three of the Raleigh-Durham stations place a Grade A signal over Goldsboro, and the fourth places a Grade B signal over that city. Finally, Group H argues that Arbitron includes Goldsboro in its Raleigh-Durham "area of dominant influence" (ADI), and other media (cable systems and newspaper television listings) as well as viewers and advertisers treat the communities as comprising one market. Group H thus maintains that redesignation of the market as proposed would extend the area in which Raleigh-Durham (and Goldsboro) stations are considered local signals, thus redefining the area in which those stations may assert territorial exclusivity, syndicated exclusivity and network nonduplication rights, and would also permit Raleigh-Durham area cable systems to carry WYED on an equal basis with other television stations in the market without incurring "distant signal" copyright liability.

7. Following the adoption of the *Report and Order* in MM Docket No. 92-259, *supra*, Group H requested that the Bureau give expedited consideration to its petition. In a letter dated April 19, 1993, Group H explains that adoption of new must-carry rules has heightened the importance of redesignating the Raleigh-Durham market. According to Group H, indemnifying just one of the cable systems in the area for the additional copyright liability the system will incur, will cost approximately $100,000 per year. In light of the fact that copyright liability is determined every six months, and given that relief from such liability will have only prospective effect, Group H is asking that the Commission move swiftly so that it can avoid further copyright liability.

DISCUSSION

8. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that WYED and stations licensed to communities in the Raleigh-Durham television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Group H's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

ADMINISTRATIVE MATTERS

Ex Parte Rules -- Non-Restricted Proceeding

9. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 23, 1993** and reply comments on or before **September 7, 1993.** All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

11. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

12. For additional information on this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AACS Communications Inc.
Motion For a Declaratory Ruling
Regarding Private Carrier Paging
Frequency 157.740 MHz In The
Dallas-Fort Worth, Texas Area

ORDER

Adopted: July 7, 1993; **Released: July 15, 1993**

By the Deputy Chief, Licensing Division:

1. On April 6, 1993, AACS Inc. Communications Inc. ("AACS") filed a Motion For Declaratory Ruling seeking to have Private Carrier Paging frequency 157.740 MHz declared to be fully loaded in the Dallas-Fort Worth, Texas area. For the following reasons the motion is denied.

2. AACS is the licensee of various Private Carrier Paging (PCP) stations in the Dallas and Fort Worth area operating on frequency 157.740 MHz. AACS has presented traffic usage studies that indicate that this frequency is used 96% to 97% of the business day. AACS seeks to have the Commission recognize that this channel is at capacity and similar to other services where channels are recognized as fully loaded, preclude new applicants from being licensed on the frequency in the area.

3. We decline to issue such a ruling. The concept of "channel capacity," however it might be demonstrated, is not relevant to licensing determinations on shared private carrier paging channels. *Memorandum Opinion and Order, Petition for Review and Supplement to the Petition For Review of Delegated Authority Which Denied Action on a Complaint Filed by Lee Richter d/b/a Nu-Page Winder Against Digital Paging Systems of Georgia*, 6 FCC Rcd 7565 (1991). ("The first licensee on the channel has no greater right than subsequent licensees with regard to satisfactory sharing of the channel.")

4. Traffic usage studies are subjective, and the validity and efficiency of the systems using these frequencies vary greatly. Because of these problems, we will not entertain requests of this type. Our rules provide that this is shared spectrum and is not assigned on an exclusive basis.

5. Because these PCP frequencies are assigned on a shared rather than exclusive basis, licensees must first cooperate to limit destructive interference, and ultimately deal with the congestion problems created by operating on a popular shared frequency. *See* 47 CFR § 90.173(b); *Order, Amendment of Section 90.173 Concerning Share Use of Paging Frequencies*, 7 FCC Rcd 1591 (1992). If we were to issue an order of the type requested, we would be creating a *de facto* loading standard for PCP channels when the Commission has repeatedly declined to do so. *See, e.g. Report and Order, Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information*, PR Docket 92-78, 7 FCC Rcd 6344 (1992); *Notice of Proposed Rule Making, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, PR Dkt 93-35, 8 FCC Rcd 2227, 2232 (1993).

6. For the above reasons, AACS's Motion For a Declaratory Ruling IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Riley Hollingsworth
Deputy Chief, Licensing Division

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-122

In re Application of

CALVARY EDUCATIONAL BROADCASTING NETWORK, INC. File No. BRED-891103UA

For Renewal of License
of Station KOKS(FM)
Poplar Bluff, Missouri

Appearances

Joseph E. Dunne, III, Esquire, on behalf of Calvary Educational Broadcasting Network, Inc.; and *Y. Paulette Laden, Esquire*, and *James Shook, Esquire*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF CHIEF ADMINISTRATIVE LAW JUDGE JOSEPH STIRMER

Issued: July 8, 1993; Released: July 16, 1993

PRELIMINARY STATEMENT

1. By *Hearing Designation Order (HDO)*, 7 FCC Rcd 4037 (1992), the Commission designated for hearing the application of Calvary Educational Broadcasting Network, Inc. (Calvary) for renewal of license of Station KOKS(FM) on the following issues:

> 1. To determine whether Calvary Educational Broadcasting Network, Inc. violated Section 73.318 of [the] Commission's Rules, 47 C.F.R. Section 73.318 (FM blanketing interference), and, if so, the nature and extent of this violation;
>
> 2. To determine whether Calvary has misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct the blanketing interference problems;
>
> 3. To determine whether the licensee's management and operation of Station KOKS was so negligent, careless, or inept, or evidenced such disregard for the Commission's rules, that it cannot be relied upon to fulfill the responsibilities imposed upon it;
>
> 4. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject license renewal application would serve the public interest, convenience and necessity.

2. The *HDO* further ordered that if the hearing record did not warrant an Order denying the license renewal application of KOKS(FM), it should also be determined if KOKS(FM) has willfully or repeatedly violated Sections 73.318 (FM blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements) of the Commission's Rules. If so, it should be determined if an Order of Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of up to $250,000 for the willful and repeated violation of the stated rules.

3. A prehearing conference was held in this proceeding on July 16, 1992. (Tr. 1-30.) An Admissions Session was held in Washington, D.C., on November 12, 1992. (Tr. 31-140.) Hearings were held in Poplar Bluff, Missouri, on November 17, 18, 19, and 20, 1992. (Tr. 141-1126.) The record was closed by *Order*, FCC 92M-1071, released December 8, 1992.

4. Proposed Findings of Fact and Conclusions of Law were filed by Calvary and the Mass Media Bureau (Bureau) on February 5, 1993. Reply Findings were filed by the Bureau on February 25, 1993, and by Calvary on February 26, 1993.

FINDINGS OF FACT

5. Calvary is a nonprofit, non-stock corporation. (Calvary Ex. 3, p. 1.) Owning and operating KOKS is Calvary's sole function. Donald Stewart is and always has been the president and director of Calvary. His wife, Nina Stewart, is and always has been the secretary-treasurer of Calvary.

Blanketing and Misrepresentation Issues

6. On March 2, 1987, Calvary filed with the Commission a construction permit application for a new noncommercial educational FM station on Channel 208C1 at Poplar Bluff, Missouri. The application was signed by Donald Stewart, president of Calvary, and listed Calvary's board of directors as Stewart, his wife, Nina Stewart, Jim Baggett, Ken Presson, and Joseph Scobey. Stewart, Nina Stewart, and Baggett were also identified as Calvary's three officers. (Tr. 340.;[1] MMB Ex. 12, pp. 2-3, 5.)

7. After discussion, the Stewarts decided to place Calvary's transmitter and antenna tower on property where

[1] At the time of her testimony, Nina Stewart identified Alan Teserau as a vice president and a director of the corporation, and Carl Clanahan and Dale Vermillion as directors of the corporation (Tr. 389). None of the officers or directors of Calvary identified by Nina Stewart, except Mr. and Mrs. Stewart, have any daily involvement with the station, and the involvement of the other directors has been confined to attendance at yearly board meetings, a pattern that has continued since the corporation was formed in 1987 (Tr. 390-392).

the Stewarts had their personal residence.[2] (Calvary Ex. 3, p. 2.) The map showing the location of Calvary's proposed tower site revealed that a radio tower for KPOB-TV (Channel 15, Poplar Bluff) was located approximately one mile away. Also located less than one-half mile from Calvary's proposed site was a substation of the Missouri highway patrol, with a radio tower for two-way police communication. (MMB Ex. 12, p. 7.) Given the presence of nearby towers, the Stewarts understood from their consulting engineer, Kevin Fisher, that Calvary could easily obtain Federal Aviation Administration approval for its proposed tower. The Stewarts also believed that Calvary could build its tower quickly at the proposed site because there were no zoning restrictions on their land. Finally, the Stewarts chose to build the tower on land they already owned for reasons of economy. (Tr. 338-339, 394-395; Calvary Ex. 3, p. 2.) In this connection, Channel 15 wanted $600 per month to locate the KOKS antenna on its existing tower. (Tr. 338.)

8. Question 24 of Section V-B of FCC Form 340 states: "If the proposed antenna location is in or near a populated area, attach Exhibit No. _____ a discussion of blanketing and the steps proposed to remedy any interference which may occur." Calvary responded, "Does not apply." (MMB Ex. 12, p. 12.) Although Stewart signed the application, the response to Question 24 was prepared by Fisher, the consulting engineer. (Calvary Ex. 14, p. 1.)

9. Fisher had prepared the engineering portion of Calvary's application. He based Calvary's response to Question 24 of Section V-B on his subjective assessment that the area surrounding the site was rural, that is, sparsely populated. (Calvary Ex. 14, pp. 1-2.) However, there is no indication that Fisher counted the number of residences within the station's blanketing contour. He did not discuss his conclusion regarding the nature of the population near the site or the potential for blanketing interference with anyone at Calvary prior to the commencement of broadcast operations. In fact, Fisher did not discuss blanketing interference with Mr. Stewart at all before the station went on the air. (Tr. 334, 353, 406; Calvary Ex. 14, p. 2.) Neither Donald nor Nina Stewart knew why Calvary responded as it did to the question about blanketing interference, and neither had any idea how many residences were located within two and one-half miles (the blanketing contour) of the proposed tower. (Tr. 340, 343-344, 399, 402.) Charles Lampe, the station's contract engineer, among others, considered the proposed tower's location to be in a residential or populated area. (Tr. 227, 969, 984, 1013.)

10. In February 1988, the truck bringing the sections of the tower pulled onto the Stewart property and began to unload. (Calvary Ex. 2, p. 1.) Very soon thereafter, Mrs. Doris Smith, the Stewarts' next door neighbor, called and asked what was going on. She was told by Stewart that a radio tower was going up. Smith stated her objection to the erection of the tower because it would ". . . be an eyesore and devalue our property." According to Smith, Stewart abruptly hung up the phone, but she called again and questioned Stewart regarding possible interference to her television reception. Stewart said, "It won't," and again hung up the telephone. (Tr. 902.) Smith discussed the erection of the tower with the Hillises, another neighbor. Smith was very dissatisfied with the KOKS tower being erected in close proximity to her house because she believed it would devalue her property. (Tr. 904.)

11. On September 6, 1988, Calvary filed its license application for Station KOKS. (MMB Ex. 13.) On October 6, 1988, at about 4:00 p.m., Calvary started broadcasting on KOKS pursuant to program test authority. (MMB Ex. 14; Calvary Ex. 3, p. 3.) When the station went on the air, neither of the Stewarts had any broadcast experience. Both had been farmers and worked in an egg-laying operation. Mrs. Stewart kept the records for the egg-laying operation. (Tr. 334, 393.) Because of the Stewarts' lack of experience, they hired an experienced general manager for the station, Jim Baggett, and a part time chief engineer, Earl Abernathy. (Tr. 388-389; Calvary Ex. 2, pp. 3-4.) Mrs. Stewart was working at the station as the station's full-time secretary, limited mostly to answering the telephones and keeping the books. (Tr. 388; Calvary Ex. 3, p. 4.) Mr. Stewart came by the station almost every day, but for the first few months after the station went on the air, he was primarily involved in working on a farm owned by his son. (Tr. 769.) His station involvement was mainly limited to technical matters. (Calvary Ex. 3, p. 4.)

12. Before KOKS began broadcasting, residents of the area near the KOKS tower generally were able to watch WPSD-TV, Channel 6, Paducah, Kentucky; KAIT-TV, Channel 8, Jonesboro, Arkansas; KFVS-TV, Channel 12, Cape Girardeau, Missouri; and KPOB-TV, Channel 15, Poplar Bluff. (MMB Ex. 2, p. 1; MMB Ex. 3, pp. 1-2; MMB Ex. 4, p. 2). Residents were also able to listen to a number of FM radio stations, including KJEZ and KKLR. Shortly after KOKS went on the air on October 6, 1988, Calvary began to receive telephone calls from persons complaining that KOKS was causing interference to their reception of television and radio. Among the persons who called the station to complain were Doris Smith, Irma Jean Hillis (hereinafter Jean Hillis), Dairel L. Denton, Jr., Clyde Freeman, Joanne Gray, Randy Soens, and Marie Christian. (Tr. 409; Calvary Ex. 3, p. 3; MMB Ex. 3, p. 3; MMB Ex. 4, p. 3; MMB Ex. 6, p. 3; MMB Ex. 7, p. 3.) Many residents complained about severe KOKS interference to reception of Channel 6. Moreover, many of those persons were no longer able to watch Channel 8. Complainants also alleged to a lesser extent that KOKS was interfering with reception of Channels 12 and 15 and with reception of FM radio. (Tr. 409, 907, 977, 993; MMB Ex. 2, p. 2; MMB Ex. 3, pp. 2-3; MMB Ex. 4, p. 2; MMB Ex. 5, p. 2; MMB Ex. 6, p. 2; MMB Ex. 7, p. 2; MMB Ex. 8, p. 2; MMB Ex. 9, p. 2; MMB Ex. 10, p. 2; MMB Ex. 17, pp. 11-29, 33-37, 40-42, 46-48, 54; MMB Ex. 19, pp. 6-37, 59-68, 71.) Because they watched television via a satellite system, the Stewarts did not experience any change in their reception when KOKS began broadcasting. (Tr. 405; Calvary Ex. 3, p. 1.)

13. When complaints about KOKS interference began, Calvary's principals did not know what to do and no provisions, either with respect to money or personnel for dealing with blanketing interference complaints, had been made. No one at Calvary had any prior experience resolving such complaints. Calvary did not even know what its

[2] Shortly before KOKS went on the air, the Stewarts transferred this property to Calvary (Tr. 335, 400).

obligations were, because it did not possess a copy of the Commission's Rules. (Tr. 365, 393, 406, 413, 428, 723, 726, 731.)

14. Mr. and Mrs. Stewart relied on Mr. Baggett to take care of the interference complaints received by the station. (Calvary Ex. 2, p. 3.) The Stewarts subsequently discovered that Mr. Abernathy visited a couple of the complainants' homes, Dairel Denton and Randy Soens. (Calvary Ex. 3, p. 4.) The Stewarts didn't know what Abernathy did at these homes, but, in any event, he did not satisfy either complainant. (Tr. 1039; MMB Ex. 4, pp. 3, 7; MMB Ex. 17, pp. 90-93.) Mr. Baggett resigned soon after the station went on the air during the latter part of November 1988, and Mr. Abernathy simply didn't show up for work when he was expected about 30 days thereafter. (Tr. 728.) Mr. Baggett had done nothing during his stint as general manager to deal with the interference complaints. (Calvary Ex. 2, pp. 3-4.)

15. When the complaints about interference came into the station they most often would come in at night, but fewer than 50 left their name. (Calvary Ex. 3, pp. 4-5.) Mrs. Smith called often, as did Mrs. Christian. The caller's name, telephone number, and description of the complaint were written down, and Mrs. Stewart returned the call within a few days. In late November 1988, Smith and Jean Hillis had prepared a form for those affected by KOKS to register their complaints with the Commission's Kansas City Field Operations Branch (FOB). The form called for the complainant to circle items believed to be affected by KOKS. (Tr. 916.) Shortly thereafter, Smith and Hillis modified their complaint form to show whether the complainant had a booster, and to allow the complainant to specify which television channels were affected by KOKS. From December 1988 through February 1989, Smith and Hillis circulated the form in their neighborhood and left stacks of them at area grocery stores. After collecting more than 100 signed forms, Smith and Hillis mailed copies of them to the Commission's Kansas City FOB. The Kansas City FOB received the first batch of complaints on December 19, 1988, and forwarded them to Calvary by letter dated December 22, 1988. Several days later, Smith and Hillis sent to the Kansas City FOB 50 additional complaints, which were then forwarded to Calvary. (Tr. 921-924, 1001-1004; MMB Ex. 3, p. 10; MMB Ex. 17, p. 1.) While Calvary was still in the process of investigating and responding to the complaints of KOKS blanketing interference, the Commission's Mass Media Bureau granted Calvary's license application. (MMB Ex. 16.)

16. By letter dated October 21, 1988, the Commission's Kansas City FOB sent Calvary two written complaints of blanketing interference. The Kansas City FOB instructed Calvary to contact the complainants and take appropriate action, which would depend upon the equipment affected and whether the complainants resided within the blanketing contour. The letter included an explanation of the licensee's responsibilities under the blanketing interference rule as well as articles providing guidance and suggestions for resolving blanketing interference problems.[3] Specific filters were named and diagrams were provided to assist in the installation of the filters. The Kansas City FOB requested that Calvary submit a report of its investigation of the complaints to the Kansas City FOB within ten days of receipt of the October 21, 1988 letter. (Calvary Ex. 3, p. 34 (Attachment A).)

17. Calvary received the Kansas City FOB's October 21, 1988, letter sometime in late October. It was discovered by Mr. Stewart when he and his wife were going through Baggett's file at the station after he had left. (Tr. 724.) The complaints referenced were from Denton and Soens. (Tr. 414; MMB Ex. 4, p. 7.) Calvary ultimately reported to the Kansas City FOB by letter dated December 6, 1988, that both Denton and Soens had boosters and were therefore excluded from protection from blanketing interference. (Tr. 359-361, 412-414; 724-726; MMB Ex. 15, p. 1.) However, Denton had two television sets that were adversely affected by KOKS interference which were not connected to the booster. (MMB Ex. 4, p. 2.)

18. Shortly after Calvary received the October 21, 1988, letter, the Kansas City FOB sent some 30 to 35 additional complaints of blanketing interference to Calvary. Neither Mr. nor Mrs. Stewart knew anything about blanketing interference, and their station engineer, Earl Abernathy, was not helpful. (Calvary Ex. 3, p. 4.) Mr. Stewart spoke to Calvary's consulting engineer, Kevin Fisher, concerning the blanketing complaints and how they might be cured. (Tr. 419.) Mr. Fisher suggested that Calvary try the installation of "string filters" -- antenna lead wire cut to specific length to correspond to the frequency of the signal which was to be suppressed. (Tr. 432.) These type filters were designed by Mr. Abernathy. (Tr. 456.) Donald Stewart took string filters to the homes of Smith and Thomas Crutchfield. Neither Smith nor Crutchfield was satisfied with the string filter that Stewart installed. (Tr. 727-728, 736-737, 911-912, 916-919; Calvary Ex. 2, p. 3.; MMB Ex. 2, pp. 3, 12.) Calvary also telephoned a number of complainants, but did nothing to resolve their problems after learning that their principal complaints concerned reception of Channel 6.[4] (MMB Ex. 17, pp. 84-85.)

19. Calvary relied on the information sent to the station by Mrs. Raines of the Federal Communications Commission's Kansas City FOB concerning blanketing interference and the station's obligations to cure blanketing interference. Mrs. Stewart understood the station's obligations to include curing any problems of blanketing interference within the blanketing area at no expense to the person and providing technical advice to those experiencing blanketing interference outside the blanketing contour. A table in Mrs. Raines' information indicated that for KOKS the blanketing contour was about 2.45 miles from the antenna site. Mrs. Stewart also understood from the information provided by the FCC that the station was not responsible for curing any problems experienced by people with boosters and preamplifiers, which were (and are) popular in the area, but that Calvary was responsible for curing interference to radios. (Calvary Ex. 3, pp. 5-6.) KOKS was also not responsible for curing interference to non-RF devices such as VCRs, telephones, etc. The information Calvary received from the FCC's Kansas City FOB also noted that the station was not responsible for curing problems to audio or video tape players or phonographs, and problems caused

[3] The attachment incorrectly stated that "portable receivers" are exempt from the FM blanketing interference rule. The rule contains no such exemption. *See*, Section 73.318 of the Commission's Rules.

[4] The Stewarts were of the view that the station had no obligation to correct reception of Channel 6.

by "malfunctioning or mistuned receivers" or "improperly installed antenna systems." (Calvary Ex. 3, p. 36 (Attachment A).)

20. Mr. and Mrs. Stewart were also told that the station was not required to cure interference to Channel 6, WPSD-TV, Paducah, Kentucky, because the station is located so far away that the station's grade B contour is not close to Poplar Bluff. (Calvary Ex. 3, p. 6.) Mrs. Stewart was told this by Calvary's consulting engineer, Kevin Fisher, and by the station's communications counsel, Joseph Dunne. (Tr. 433, 580.) Mrs. Stewart in several telephone conversations with Mrs. Raines mentioned that certain complaints received by the station only dealt with the reception of Channel 6 which the station did not have any responsibility for curing, and Mrs. Raines did not contradict her. Several of Calvary's written submissions to the FCC made the point that Poplar Bluff was far outside Channel 6's protected contour, that the station was not obligated to correct this interference, and no information to the contrary was given by the FCC. (MMB Ex. 15, p. 2; Calvary Ex. 3, p. 7.) Mrs. Stewart mentioned to Mr. Moffitt, an FCC engineer, during his May 1989 inspection of KOKS, that the station wasn't responsible for curing interference to Channel 6, and Moffitt did not state otherwise. (Tr. 596.) Finally, Mrs. Stewart believed that KOKS had no obligation to cure interference to Channel 6 based on a letter which she received from the management of WPSD-TV (Channel 6). (Calvary Ex. 3, p. 7; Calvary Ex. 3, p. 44 (Attachment B).)

21. Mrs. Stewart began making calls to complainants in November of 1988, asking them to describe the problem and making appointments to visit the home to attempt to correct the problem. Mrs. Stewart and one volunteer made all the calls to complainants because the station was short of staff. (Calvary Ex. 3, pp. 7, 9.) Mrs. Stewart estimated that approximately 60 percent of the calls she received complaining of interference referred solely to interference to Channel 6 alone. (Tr. 573.) Mrs. Stewart also asked if the person had a booster or preamplifier, and if the person was experiencing interference to other channels. If the person complained only of Channel 6 interference, or had a booster or preamplifier, Mrs. Stewart advised the person of an FM notch filter, an 0-75, that often reduced interference, whatever the cause. Mrs. Stewart did not believe that the station was responsible for curing interference to Channel 6, or to someone with a booster. (Calvary Ex. 3, pp. 7, 9.) Mrs. Stewart did not ask about the number of TV sets in a home or if the complainant had a TV which was not hooked up to a booster, nor did she ask about radio reception. (Tr. 431.)

22. On December 6, 1988, Calvary submitted its first report of its activities regarding blanketing interference complaints to the Kansas City FOB. Calvary stated that most of the complaints did not warrant further action on its part, either because the complaint had been withdrawn, the complainant had a booster, or the only channel affected by KOKS was Channel 6 from Paducah. In Calvary's view, it had no obligation to eliminate interference to Channel 6 because Poplar Bluff is located outside Channel 6's grade B contour. Calvary acknowledged that six complaints had not yet been resolved. The six complainants included Paul and Doris Smith, Paul D. Summer, Mary Wynn, Betty Anderson, Randall Felts (Filo), and William (Bill) Hillis, Jean Hillis' husband. (MMB Ex. 15.)

23. With respect to the Smiths, Calvary reported that they had complained about interference to Channels 6 and 12; that Calvary had provided a filter to the Smiths; and that, after the Smiths continued to complain, Calvary offered to install a filter on their outside antenna. According to Calvary, Smith had refused to give Calvary permission to walk on the roof of her home. Pointing to Smith's October 5, 1988, letter to the Commission and her efforts to generate additional complaints relative to KOKS interference, Calvary suggested that Smith was not cooperative, and that she would not be satisfied until KOKS' tower was dismantled. (MMB Ex. 15, pp. 2-3; MMB Ex. 2, pp. 7-8.)

24. According to Mrs. Stewart, almost no one, in a telephone call or in a subsequent home visit, mentioned interference to anything other than a television, including a radio. (Calvary Ex. 3, p. 7.) Mrs. Stewart noted that the Hillises mentioned interference to their tape player and radio during a home visit in 1989, although nothing was done to correct either.[5] Mrs. Stewart recalled that Mrs. Mary Wynn complained about interference to her radio, and a choke filter was installed on her radio which Mrs. Stewart thought cured the problem. (Calvary Ex. 3, pp. 7-8.) However, according to Mrs. Wynn, the installation of a choke filter did nothing to restore radio reception or cure the interference, and that the filter Mrs. Stewart installed did not improve reception. (Tr. 651.) Mrs. Betty Anderson was also a person who complained to Mrs. Stewart about her radio reception during a home visit, and a filter was installed on both her television and radio set. Mrs. Joanne Gray also complained about problems with her radio when Mrs. Stewart visited her house. (Calvary Ex. 3, p. 8.) According to Mrs. Gray, KOKS interference came in across the FM radio dial, and that nothing could be heard on the AM band but a loud buzz. (Tr. 980.) Mrs. Gray turned on the radio when Mrs. Stewart was there so she could hear the buzz, and Mrs. Stewart told her that there was nothing that she could do about that. (Tr. 980, 983; Calvary Ex. 3, p. 8.) According to Mr. Lampe, KOKS' contract engineer, he visited over 105 homes as a representative of KOKS, and no one asked him about their radio reception. (Tr. 321.) However, Lampe was only concerned with taking care of the television problem and did not ask whether radios were subject to KOKS interference. (Tr. 321.)

25. Mrs. Stewart knew that the blanketing contour was about 2.5 miles from the station and determined whether a complainant was within the blanketing contour using that person's estimate of the distance of their home from the antenna site or guessing the distance to their home from the directions they gave over the telephone. (Calvary Ex. 3, p. 8.) Because the area is largely rural, there were no handy street references, and Mrs. Stewart's guesses were sometimes wrong concerning who was within and without the blanketing contour. The Ellises, for example, lived within the blanketing contour, but Mrs. Stewart believed they lived outside the contour from their directions. From

[5] The station is not required by the FCC Rules to cure interference to an audio tape player. *See*, Section 73.318(b) of the Commission's Rules. *See, also*, Calvary Ex. 3, p. 36 (Attachment A).

his directions, Mrs. Stewart believed that Edward Hodgins lived beyond the blanketing contour. (Tr. 1080.) A map of the blanketing contour wasn't prepared until the FCC ordered it, and it was submitted to the FCC in September 1989. (MMB Ex. 20, p. 2; Calvary Ex. 3, p. 9.)

26. With only a few exceptions, Mrs. Stewart did all the work of responding to the interference complaints. (Tr. 568.) Mrs. Stewart went to the homes of those within the blanketing contour to install string filters. (Calvary Ex. 3, p. 10.) These filters, according to Mrs. Stewart, generally worked to improve reception of Channel 8 but did nothing regarding Channel 6. After visiting a few homes, Mrs. Stewart discovered that the 0-75 filter was more successful, in many instances, of curing interference to Channels 6 and 8. Mrs. Stewart had a number of complaints to resolve and did not believe that the station's resources were such that it could hire Mr. Lampe to do the job. Mrs. Stewart estimated that she visited between 135-150 homes, some more than once, attempting to resolve complaints concerning KOKS interference. (Tr. 597-598.) Many persons required more than one call before they were reached, and Mrs. Stewart estimated that she spent an average of 30 hours per week between November 1988 and June 1989 calling people and visiting homes in response to blanketing interference complaints. (Tr. 570.)

27. According to Mrs. Stewart, responding to the complaints was made difficult not only because of their number, but also because they were handwritten and difficult to read. (Calvary Ex. 3, p. 11.) Sometimes different people with the same surnames (such as Clara, Clyde and Mary Freeman) called the station or submitted complaints, adding to the confusion. (Tr. 541.) At times, one member of the household would make the complaint, and Mrs. Stewart would speak to another member of the household. (Calvary Ex. 10, p. 1.) At times, complaints would overlap, in that a second complaint would be submitted to the FCC, and Mrs. Stewart would be uncertain if the person submitted the complaint before or after her visit to the home. (Tr. 614.) When she went to a person's home, even if it were in response to a written complaint to the FCC, she did not bring that person's complaint along. (Tr. 571.)

28. In January 1989, the Smiths, Randy Soens, and Thomas Crutchfield filed suit against Calvary in local court, in which the Hillises later joined, claiming that KOKS was depriving the complainants of their broadcast rights and seeking unspecified monetary damages. (MMB Ex. 17, pp. 90-93.) The case was dismissed and later appealed to the Missouri Court where it was not finally dismissed until the latter part of 1989. (Tr. 599-602.) Calvary's local counsel advised the Stewarts against speaking with any of the plaintiffs in the suit, if possible, while it was pending. The Stewarts tried to comply with this advice consistent with its obligation of responding to the FCC requirements. (Tr. 602.)

29. By letter dated January 24, 1989, Calvary submitted a report to the Kansas City FOB office regarding the first group of December complaints. Calvary reported that it had resolved nine complaints, including those of Leatha Piper and Mary J. Wynn; that it had made filters available to 13 complainants, including Denton, who employed boosters; and that six complainants, including Crutchfield, had not cooperated with KOKS personnel. With respect to 18 persons whose only complaint was the loss of Channel 6, Calvary stated it had recommended a filter which would allow Channel 6 to be received. In a section entitled "Miscellaneous Responses," Calvary stated that complaints of Clara Freeman and Jean Hillis had not yet been resolved due to the unavailability of necessary filters; that Nina Stewart had been unable to contact Smith; and that Sandra Durbin's complaint was based on Channel 6. Finally, Calvary reported that Smith and her husband, Soens and Crutchfield had filed a civil lawsuit against Calvary because of alleged KOKS interference. (MMB Ex. 17, p. 3.)

30. By letter dated February 10, 1989, Calvary submitted a supplemental response to its January 24, 1989, letter. Among other things, Calvary reported that it had resolved the complaint of Clara Freeman by the installation of a filter; that it could not arrange a convenient appointment time with Edward Hodgins; and that Durbin had failed to keep her appointment. Calvary also informed the Commission that it had gone to the home of William Hillis (Jean Hillis' husband) with Charles Lampe, the station's contract engineer. (MMB Ex. 18, pp. 2-4.)

31. By letter dated February 24, 1989, Calvary submitted its report relative to the second group of December complaints that had been forwarded to it by the Kansas City FOB. Once again, Calvary reported that a number of complainants had problems only with Channel 6 and that for those complainants Calvary had recommended a filter to cure the problem. Likewise, Calvary stated that it had suggested a filter for those complainants who used a booster. Calvary also informed the Commission that it was able to cure the interference problems of the following individuals with the installation of a filter: Clyde/Clara Freeman, Mrs. William T. (Joanne) Gray, Leona Gunter, Sandra Durbin, Cathy Kearbey, G. Wayne Kearbey, John Parker, and Elaine "Libes."[6] Calvary's report said nothing about the complaints of Smith and the Hillises. (MMB Ex. 19, p. 2.)

32. With respect to Doris Smith, Calvary essentially claimed that despite repeated attempts to resolve her problems, she would not cooperate. (MMB Ex. 15, pp. 2-3.) Nevertheless, Mr. Stewart installed a filter on Smith's television, but it did not work. (Tr. 737.) Further, when Calvary reported in its January 24, 1989, letter to the Commission's Kansas City FOB that it had been unable to contact Smith, its own notes show that Nina Stewart had contacted Smith on January 15, 1989, and told her that filters necessary to resolve Smith's complaints were unavailable, and that Smith would be called as soon as Calvary obtained the filters. (MMB Ex. 17, pp. 3, 84.)[7] However, Calvary never contacted Smith again until the Commission forced it to do so in late 1990. (Tr. 515-516; MMB Ex. 2, pp. 3-4, 7-8; MMB Ex. 17, p. 3; MMB Ex. 25.)

33. With respect to William and Jean Hillis, Calvary twice reported that their complaints had not yet been resolved, the second time because a necessary filter was unavailable. (MMB Ex. 15, pp. 4-5.) When Calvary finally visited the Hillis residence in the company of its engineer, Charles Lampe, it reported that KOKS was not interfering

[6] Mrs. "Libes" was Mrs. Elaine Libla. (Tr. 539.)

[7] These notes also reflect that Stewart tried to reach Smith on five other occasions between January 6 and 13, 1989, without success. (MMB Ex. 17, p. 84.)

with the Hillis' main television and that a second television had a short. In addition, because of the supposedly confusing nature of Mr. Hillis' complaints, Calvary indicated it would do no work on the Hillis' equipment until Mr. Hillis reduced his complaints to writing. (MMB Ex. 18, pp. 3-4.) It was Lampe's view that when someone had that many complaints, if they are not required to write them down and quantify them, then it would not be possible to satisfy that individual. (Calvary Ex. 1, p. 6.) However, the Hillises had already reduced their complaints to writing and Jean Hillis had spoken to Nina Stewart on at least two prior occasions about KOKS interference to her television. (Tr. 518; MMB Ex. 3, p. 3; MMB Ex. 17, p. 85; MMB Ex. 21, pp. 175-177.) In addition, Calvary never showed the Hillis' written complaints to Lampe. (Tr. 232; Calvary Ex. 1, p. 6.) Moreover, Nina Stewart acknowledged that she heard KOKS audio on Channel 6 when she was at the Hillis residence in 1989, and three visits by the Commission's Kansas City FOB to the Hillis residence confirm that KOKS had adversely affected the quality of reception of three television channels at the Hillis residence. (Tr. 530; Calvary Ex. 6, p. 7; MMB Ex. 1, p. 31.) Finally, despite the fact that Jean Hillis ultimately submitted specified detailed complaints in her December 1989 "Petition to Deny," Calvary made no effort to contact the Hillises to review their television reception problems until forced to do so by the Commission in late 1990. Calvary sought to excuse its failure for not contacting the Hillises on Mr. Hillis' failure to send Calvary a written list of his complaints. (Tr. 522-528; MMB Ex. 23, pp. 2-3.)

34. With respect to Sandra Durbin, Calvary variously reported that her only complaint concerned Channel 6, that she failed to keep an appointment with KOKS personnel, and that her interference problems were addressed with the installation of a filter. (MMB Ex. 15, p. 2; MMB Ex. 17, p. 3; MMB Ex. 18, p. 3; MMB Ex. 19, p. 2; MMB Ex. 21, p. 9.) However, contrary to Calvary's report to the Commission, it appears that Durbin complained about interference to channels other than Channel 6; that Calvary had cancelled its first appointment with her; and that Durbin called Nina Stewart and later complained repeatedly in writing that the filter Calvary installed did not work. Nevertheless, Calvary never returned to Durbin's residence or offered further assistance. (Tr. 554; MMB Ex. 5, pp. 3-4, 11-12, 17.)

35. With respect to Edward Hodgins, Calvary excused its failure to resolve his complaints by reporting that it could not arrange a convenient time for an appointment. (MMB Ex. 18, p. 2.) However, according to Hodgins, Calvary failed to keep three appointments which were made. (MMB Ex. 8, p. 1.) Moreover, Calvary never contacted Hodgins again until the Commission forced it to do so in 1991. (MMB Ex. 8.)

36. Calvary reported in its January 24, 1989, letter that the complaint of Mary Wynn has "apparently been resolved by the installation" of a filter. (MMB Ex. 17, p. 2.) However, Wynn disputed Calvary's statement in complaints dated January 19, 1989, February 24, 1989, and June 9, 1989. (MMB Ex. 10, pp. 9, 11-12, 14.) Finally, Calvary reported in a September 22, 1989, letter to the Commission that only the reception of Channel 6 was affected by blanketing on Wynn's television set, and that a filter was installed, but that Wynn was dissatisfied with the result. (MMB Ex. 21, p. 19.) Calvary reported in its February 24, 1989, letter that it had resolved Joanne (Mrs. William T.) Gray's complaint with the installation of a filter. However, Gray disagreed with this assessment in a complaint dated February 23, 1989, two days after Calvary's visit to her home, and repeated her complaint on June 7, 1989. (MMB Ex. 7, pp. 9-10, 12; MMB Ex. 19, p. 2.)

37. Calvary almost never resolved complaints of KOKS blanketing interference to radios. Thus, although Denton's December 7, 1988, complaint alleges KOKS interference to radios, Calvary reported that Denton had a booster, while its notes concerning Denton reflect that Calvary had made a filter available only for his television. (MMB Ex. 4, p. 9; MMB Ex. 17, pp. 2, 37.) Similarly, Calvary never resolved alleged KOKS interference to the radios of Cindy Diel, Willard Garrison, Karen McCullen, Fred Dicker, Tammy Earls, Dorothy Robbins, Scott Lundstrom, Charles Sisk, and Georgia Young, who were among the first group of December 1988 complainants; nor did it address alleged KOKS interference to the radios of Ted Smith, Richard Starling, Denise Mabry, Frieda Paris, Peggy Beckham, George Wisdom, Sandra Durbin, and Kathy Kearbey, who were among the second group of December complainants. (MMB Ex. 17, pp. 12, 16, 20-22, 33, 35-36, 40; MMB Ex. 19, pp. 8, 21-22, 31, 34, 37, 62-63.) Finally, Calvary never addressed alleged KOKS interference to the radios of Doris Smith and Jean Hillis. (Tr. 515-516; MMB Ex. 2, pp. 7-8, 10, 14, 16, 19; MMB Ex. 3, p. 7; Calvary Ex. 6, p. 6.)

38. Calvary reported that it installed or provided "filters" to complainants of KOKS interference. Initially, Calvary used inexpensive string filters, most of which were installed by Nina Stewart. Sometime between December 1988 and February 1989, Calvary generally stopped installing string filters and began to install more expensive Archer FM trap (0-75) filters which it purchased from Radio Shack for approximately $4.00 each. (Tr. 252, 457-458.) The information provided to Calvary by the Kansas City FOB indicates that Archer filters, although apparently more effective than the string filters, were not designed to address the severe interference caused by KOKS to residents located near the station's tower. (Tr. 252-254, 258; Calvary Ex. 3, p. 39 (Attachment A).) Nevertheless, Calvary continued to install and/or recommend the Archer filters even after it began installing the more expensive FM notch filters which it purchased from the Microwave Filter Company. (MMB Ex. 27, p. 63; MMB Ex. 32, pp. 1-5.)

39. Blanketing complaints were not the only problem facing the station. Specifically, KOKS had a number of technical problems with its antenna, beginning with a fire in the antenna just two weeks after the station went on the air. (Calvary Ex. 3, p. 11.) This required the station to operate at one-third to one-half power until mid-December 1988. (Calvary Ex. 8, p. 1.) The damaged antenna had to be sent to the factory for repairs. (Calvary Ex. 3, p. 12.) On December 23, 1988, someone shot the station's coaxial cable, requiring the station to reduce power. (Calvary Ex. 9, p. 1.) In May 1989, there was another fire in the antenna. Also, a lightning strike on May 30, 1989, shorted out the antenna and a stand-by antenna was used. The stand-by antenna was replaced by an entirely new antenna, but this antenna continued to have arcs, especially during rainy weather and heavy fog and caught fire in the spring of 1990. Arcing was a common problem, and the station reduced its power, within legal limits, in wet weather. Finally, the antenna manufacturer replaced the antenna with an entirely new 7-bay antenna. Because the antenna has exactly the same directionality as the 4-bay antenna that it replaced, the antenna manufacturer, Shively, in-

formed Calvary that the proof of performance for the 7-bay antenna was the same as for the 4-bay antenna. (Calvary Ex. 3, pp. 12-13.)

40. On March 15, 1989, the Commission's Kansas City FOB referred the KOKS blanketing matter to the Mass Media Bureau. By letter dated March 29, 1989, the Chief, FM Branch sent to Calvary copies of 698 complaints of KOKS blanketing interference. The Chief explained the requirements of the blanketing interference rule (Section 73.318 of the Commission's Rules) and informed Calvary that the blanketing contour for its station extended "2.45 miles in the major lobe." Calvary was instructed that, with respect to each complaint, it was to identify the type of interference; whether or not the interference was in the blanketing area; the dates and description of the assistance provided by KOKS; and whether or not the interference had been resolved. Finally, Calvary was directed to include with its report a map which showed the KOKS transmitter site, the blanketing contour, and the homes of all complainants. The Commission gave Calvary 45 days to submit its report. (MMB Ex. 20.)

41. In May of 1989, before KOKS submitted the requested report to the Commission, the station was inspected by Mr. Clark Poole, an FCC engineer. Mr. Poole cited the station for failing to keep an issues/programs list in the public file and for violations concerning the EBS rules. Mr. Poole also asked about the list of donors which were required to be in the public file. He explained to Mrs. Stewart what an issues/problems list was and when the list of donors should be inserted in the public file. (Calvary Ex. 3, p. 13.)

42. Mr. Poole prepared a report dated June 5, 1989, concerning his inspection of KOKS and the blanketing complaints. The report reveals that Doris Smith could not receive either Channel 6 or 8 and that the picture of Channels 12 and 15 was degraded by heavy snow. KOKS audio was in the background of all four channels. At the Hillis residence, the FOB inspector found that Channels 6 and 8 were unviewable, while Channels 12 and 15 had good picture and sound. When KOKS went off the air, the Hillises could receive Channel 6, but Channel 8 "remained bad." The report further indicates that Poole made measurements of the signals of Channels 6, 8, and 12 in areas around town, and none of the station's signals made the grade B signal levels defined in Commission Rules. The report notes that Poole advised the Smiths and Hillises that "the Commission could not require correction of blanketing problems for signals which did not make the Class B contour." Mr. Poole also reported that litigation had been initiated in local court, and that Mr. Stewart had been advised by his local counsel not to do anything further until the court case was resolved. Mr. Poole identified the main problem with KOKS as follows: "that they exist close to complainants who have received substandard television signals with good results for many years." (Calvary Ex. 5, pp. 2-4.)

43. Calvary responded to the Commission's March 29, 1989, letter on September 22, 1989. At the outset, Calvary noted that it had already responded to many of the complaints in its prior letters to the Commission's Kansas City FOB. Nonetheless, Calvary also contended that its responses to complaints had been delayed by technical difficulties and by limited financial resources. It also stated that lack of funds prevented the preparation of a map, and further stated that it was "practically impossible" to submit a map showing the blanketing contour and all the complainants marked on it, because there were in excess of 700 complaints. However, it was believed that less than ten percent of the complainants were within the blanketing contour. From the information submitted by Calvary, it appears that the last contact with a complainant was May 9, 1989, more than four months before Calvary's report of September 22, 1989, was submitted to the Commission. Calvary, in its report, estimated that only 89 of the complainants resided within the blanketing contour. Calvary stated that unless the complainant was personally known by station personnel, it determined whether or not the complainant resided within the blanketing contour based on the estimate provided by the complainant as to how far the complainant lived from the KOKS tower. (MMB Ex. 21, pp. 1-4.)

44. With respect to the 89 complainants found to be within the blanketing contour, Calvary reported that only eight had experienced blanketing interference. Calvary further reported that the complaints of all eight had been resolved. Calvary excluded from consideration those who complained only of KOKS interference to reception of Channel 6, Paducah, Kentucky; those who possessed a booster; those who would not cooperate with station personnel; and those who possessed satellite dishes. Calvary also reported that it had resolved non-blanketing interference problems for 17 of the 89 complainants within the blanketing contour. (MMB Ex. 21, pp. 3-4.)

45. Calvary's report reflects that the eight complainants deemed to have experienced blanketing interference included Durbin and Gray. With respect to Durbin, Calvary's notes show that a filter put on her television on February 21, 1989, "improved reception very much." (MMB Ex. 21, p. 43.) However, Durbin complained again on June 7, 1989, of continued KOKS interference to both her television and her radio. (Tr. 552-555; MMB Ex. 5, pp. 11-12.) As for Gray, Calvary's report did not state when Calvary had supposedly cured Gray's blanketing interference; however, the report reveals only one visit to Gray. With respect to that visit, Calvary stated that it cured blanketing interference to Channel 8. (MMB Ex. 21, p. 12.) Gray, nevertheless, complained on February 23, 1989, that Calvary's visit of February 21, 1989, had not improved reception on Channels 6, 8, and 12. Gray repeated her complaint on June 7, 1989. Moreover, both of Gray's complaints stated that Calvary had not resolved interference to her radio. (Tr. 446-450, 653-655, 984-985; MMB Ex. 7, pp. 9-10, 12.) Calvary had received and read both the Durbin and Gray complaints before it submitted its September 22, 1989, report. (Tr. 450, 553.)

46. In Calvary's September 22, 1989, report, Clyde and Mary Freeman, Leatha Piper, and Mary Wynn were among the 17 whom Calvary reported to have experienced non-blanketing interference. With respect to all of them, Calvary reported that installation of filters had improved their reception. (MMB Ex. 21, pp. 11, 16, 19, 48, 62, 81.) However, it was reported by Calvary that Clyde and Mary Freeman had removed the filter before the KOKS representative had left the home. (MMB Ex. 21, p. 11.).[8] Clara

[8] Calvary does not explain why the Freemans removed the filter if it, in fact, improved reception as claimed by Calvary.

Freeman subsequently stated that the filter placed on the Freemans' television was "no help." (MMB Ex. 6, p. 6.) Moreover, Wynn and Piper both complained in June 1989 of continued interference, and Calvary made no attempt to address Piper's complaints of interference to her radio. (Tr. 437, 440, 463-465; MMB Ex. 10, p. 14; MMB Ex. 29, pp. 5-6.) Finally, Calvary's suggestion that it owed no further duty to Piper because she had installed a booster, failed to disclose that the repairs to Piper's television reception, which included the installation of a booster, had been made by Charles Lampe, KOKS' engineer; that Piper had paid Lampe in his individual capacity;[9] and that Calvary had refused Piper's request to reimburse her for her payment to Lampe. (Tr. 631-632; MMB Ex. 29, p. 6.)

47. In addition, Calvary's reports failed to correctly note the situations regarding Hodgins, Smith, and Jean Hillis. Thus, although Hodgins had complained that Calvary failed to keep three appointments with him, Calvary's report is silent as to Hodgins. (MMB Ex. 8, pp. 5-6.) Likewise, although Smith had complained repeatedly about KOKS interference to her televisions and radio, the report's only reference to her was that a lawsuit initiated by her and three others had been dismissed. Finally, with respect to Jean Hillis, Calvary acknowledged her complaints, but suggested that it need not do anything because she was a party to Smith's lawsuit. (MMB Ex. 2, pp. 7-17; MMB Ex. 21, p. 26.)

48. The factual representations in Calvary's letter were verified by Nina Stewart. (MMB Ex. 21, p. 183.) All of the information submitted by Calvary in its letters of December 6, 1988, January 24, 1989, February 24, 1989, to the Commission's Kansas City FOB, and its letter of September 22, 1989, to the Chief, FM branch, was transmitted by Nina Stewart to counsel. (Tr. 449, 510-511, 522, 553.) She was the person who received many of the complainants' telephone calls, arranged for home visits, and installed Calvary's filters. Nina Stewart established and maintained complainants' files, and she read each complaint Calvary received from the Commission. (Tr. 424, 458, 469.) However, she did not review a complainant's file before going to that person's residence. (Tr. 495.) Mrs. Stewart explained that she had reason to suspect the accuracy of the written petition complaints which she received from the FCC. In some instances, the petition did not seem to reflect the actual complaint, and, in some instances, the complaints were altered. In this regard, several complainants told her that their problem was with Channel 6, but the petitions had more channels marked as being affected by blanketing. One woman told her that she really had no complaint, but signed one to satisfy Mrs. Smith and Mrs. Hillis. Mrs. Stewart could not explain the disparities between her statements to the Commission and those of some complainants' regarding Calvary's resolution of their complaints. (Tr. 464, 552-553, 556-557.)

49. On December 12 and 13, 1989, the Commission's Kansas City FOB conducted a second inspection of Station KOKS and visited the homes of various complainants of blanketing interference. This inspection was conducted by Mrs. Karen Raines, a Public Affairs Specialist, and Mr. Michael Moffitt, an engineer. The homes of the following individuals were visited: Mrs. Ted Adams; Mrs. William Gray; Mr. and Mrs. Jim Farley; Mr. and Mrs. Pat Smittle; Mr. and Mrs. Wayne Kearbey; Mrs. Doris Smith; and Mr. and Mrs. Bill Hillis. (Calvary Ex. 6, p. 2.) At each residence, reception was observed with KOKS on and off the air. The report noted that some complainants complained of ghosting on Channel 15. This ghosting was not the result of KOKS transmissions, but may have resulted from construction of the KOKS tower. (Calvary Ex. 6, p. 3.) The report also noted that several complainants experienced intermittent interference on some channels, described as a "herringbone pattern" characteristic of two-way radio interference. The report noted that a highway patrol station is located nearby and is authorized to operate KAA270 on 42 mHz, and that operation in this band is a source of intermittent interference to the television IF frequency.

50. The report, prepared following this inspection, described television reception when KOKS was both on and off the air, and the television equipment of each complainant. With regard to the Smith's, with KOKS on the air Channel 6 was blank; Channel 8 was a TASO 5,[10] with the picture described as very snowy because ". . . there is not enough signal for the television to tune to electronically..."; Channels 12 and 15 are described as a TASO 3 picture, with KOKS audio faintly in the background. With KOKS off the air, Channel 6 is described as a TASO 5, with "no picture, extremely snowy;" Channel 8 as a TASO 4, with "extremely snowy, unwatchable picture;" and Channels 12 and 15 as a TASO 3, with Channel 12 showing a "slight improvement" and Channel 15 with the same description of the picture without the KOKS audio interference. The Smiths also complained of KOKS interference to their radio set. In the report, it was noted that the Smiths had filed a lawsuit against KOKS, and that Mrs. Smith wanted a "qualified engineer" to put a filter on her system -- not Mr. or Mrs. Stewart. (Calvary Ex. 6, pp. 5-6.)

51. At the Hillis home, when KOKS was on the air, no picture was received on Channels 6 and 8, and Channels 12 and 15 had a TASO 3 and a TASO 4 picture, respectively. Channel 12 was described as "decent but grainy picture" while Channel 15 "color fades in and out, extreme ghosting." With KOKS off the air, Channel 6 was described as a TASO 3, with a "snowy picture, no color;" Channel 8 as a TASO 4, with a "very snowy picture;" and Channels 12 and 15 as a TASO 3 and a TASO 4, respectively, with notations of "little if any improvement" and "slightly better, extreme ghosting," respectively. The Hillises believed that the station had not gone off the air because the stereo light had not gone off on their stereo set, but this was attributed to a malfunction in their stereo receiver. The Hillises also received KOKS interference on their stereo radio. (Calvary Ex. p. 7.)

52. The report on the visit to Mrs. Ted Adams noted that two-way radio interference from the highway patrol station across the street was observed on all channels. Moreover, the TASO readings and notes on interference were the same when KOKS was on and off the air, with the exception of Channel 6, which was not received at all when KOKS was operating and which was received with a TASO 3 picture when KOKS was off the air. (Calvary Ex. 6, p. 9.)

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[9] In addition to being the contract engineer for KOKS and KJEZ-FM, Poplar Bluff, Lampe owns and operates a television repair business in Poplar Bluff known as Charlie's TV Repair. (Calvary Ex. 1, p. 1.)

[10] TASO numbers are generally used to describe the quality of television reception. The lower the number, the better quality reception. The scale is from 1 through 6.

The Farleys did not receive Channel 6 at all with KOKS on the air but received a TASO 3, described as a "fair picture," with KOKS off the air. Channel 12 reception improved from a TASO 3 to a TASO 2 with KOKS off the air. The reception of Channels 8 and 15 improved from a TASO 3 to a TASO 2, described as a "good picture," with the installation of an FM trap filter. (Calvary Ex. 6, p. 11.) Mrs. Gray reported interference from KOKS on the lower portion of her FM band, but her main concern was the buzz on her AM band, which was present with KOKS off the air. On Mrs. Gray's television set, with KOKS off the air, she received a TASO 3 signal on Channel 6, noted as only a "slight improvement" from when KOKS was on the air, and an improvement from a TASO 4 to a TASO 3 on Channel 8, when KOKS was off the air. The Smittles had exactly the same TASO readings when KOKS was off the air and when it was on, and noted only that the TASO 3 picture went from no color to color when KOKS went off the air. Mr. and Mrs. Kearbey were noted as having a set in poor repair, and the reception of most channels with KOKS on or off the air was noted as no better than a TASO 3. Only one channel improved with KOKS off the air, and that was Channel 12 which went from a TASO 3 with a notation of "grainy" to a TASO 2 with a notation of "good picture." The Penningtons did not receive Channel 6 at all with KOKS either on or off the air and went from a TASO 4 to a TASO 3 on Channels 8 and 12 with KOKS off the air. (Calvary Ex. 6, pp. 13-16.)

53. The report characterized the operation of KOKS as the source of "some interference to television reception," but it also noted that "there are additional reasons for poor reception." The report further noted that the KOKS interference was most pronounced on Channel 6, and that while the station had made no attempt to resolve interference to FM receivers, this "was not a major concern of the complainants." (Calvary Ex. 6, pp. 17-18.)

54. On November 3, 1989, Calvary filed its application for renewal of license for Station KOKS. On December 18, 1989, petitions to deny the application were filed by Smith and Jean Hillis. In addition, informal objections to Calvary's renewal application were filed by various persons including Denton, Durbin, Clara Freeman, William T. Gray (Joanne Gray's husband), Wynn, and Piper. The petitions and informal objections generally alleged that Calvary had not resolved KOKS interference to televisions and radios. Piper also alleged that she had spent more than $100 in attempting to restore her reception.[11] Finally, Smith and Clara Freeman charged that Calvary had lied to the Commission about its efforts to resolve their complaints. (MMB Ex. 2, pp. 19-21; MMB Ex. 3, pp. 7-10; MMB Ex. 4, pp. 11-12; MMB Ex. 5, p. 17; MMB Ex. 6, p. 6; MMB Ex. 7, p. 17; MMB Ex. 10, p. 16; MMB Ex. 29, pp. 7-8.)

55. In responding to the Smith and Jean Hillis petitions, Calvary submitted, on January 30, 1990, a Verified Statement of Lampe. Therein, Lampe acknowledged his employment as Calvary's contract engineer, and that he had discussed Smith's situation with her on many occasions. Lampe related that because Smith wanted her reception restored to what it was before KOKS began broadcasting, he believed there was little reason to attempt to resolve her complaints. With respect to Jean Hillis, he acknowledged being at her home but suggested that Calvary had not corrected her complaints because her husband had not submitted his complaints in writing to the station. (MMB Ex. 23.)

56. By letter dated April 27, 1990, the Chief, Audio Services Division of the Mass Media Bureau requested Calvary and petitioners Smith and Jean Hillis to plot on enclosed maps the locations of persons who complained of interference during the initial year of KOKS' broadcast operations. The purpose of the maps was to determine which of the complainants resided within KOKS' blanketing contour. The parties were directed to return the maps within 45 days of the date of the letter. The letter further stated that, "We have, as yet, made no final determination in this case concerning the types of service interruptions that fall within the ambit of the Commission's blanketing rule, 47 C.F.R. Section 73.318." (MMB Ex. 24.)

57. On October 30, 1990, the Chief, Audio Services Division released an *Order* in which the interference complaints were grouped into three categories. Specifically, it was determined that Calvary may not have satisfied the complaints of as many as 220 persons found to be residing within the KOKS blanketing contour and who complained within one year. Accordingly, the Chief ordered that Calvary restore service at no cost to those complainants within 120 days. The Chief informed Calvary that it need not take further action with respect to 13 complainants whose problems, according to Calvary, had been resolved. Among those complainants were Sandra Durbin, the Freemans, Mrs. William T. (Joanne) Gray, Leatha Piper, and Mary Wynn. (MMB Ex. 25, p. 3, n.5 .) Further, with respect to complainants found to be residing outside the blanketing contour, the Chief ordered that Calvary provide technical information and assistance on how to resolve their problems. Finally, with respect to complainants who filed beyond the initial one year period, Calvary was to provide technical assistance. Calvary was ordered to submit progress reports every 30 days. (MMB Ex. 25.)

58. To determine which complainants desired further assistance, Calvary prepared a questionnaire and sent one to all persons whose service was to be restored. The questionnaire asked whether the complainant was receiving blanketing interference on Channels 8, 12, 15, and 39; whether the complainant was receiving blanketing interference to satellite reception; whether the complainant had a booster; and whether the complainant was receiving interference from the highway patrol. Finally, the questionnaire informed complainants that Calvary was not responsible for interference caused to Channel 6. The questionnaire did not ask for the number of television sets owned by the complainant or whether any radios were affected by KOKS interference. Also, the questionnaire did not inquire, with respect to those persons who had a booster, whether any television sets were not connected to the booster. Calvary sent out its questionnaire in the first week of December 1990. (Tr. 484-488; MMB Ex. 27, p. 1; MMB Ex. 31.)

[11] Piper had employed and paid Lampe, KOKS' contract engineer. When she inquired about reimbursement from Calvary, Donald Stewart told her the station had no money. (MMB Ex. 29, p. 6.)

59. Calvary did not send a questionnaire to those persons whose problems it had reportedly cured. Moreover, Calvary did not look at the files it maintained to determine whether any of those persons had complained subsequent to the visit during which their problems had supposedly been resolved. (Tr. 496.) Mrs. Stewart was aware that Mrs. Durbin and Mrs. Piper had filed other complaints since she reported their complaints cured, but Mrs. Stewart thought they were satisfied when she reported that to the FCC. Mrs. Stewart "just missed additional complaints." (Tr. 539, 553.) Mrs. Stewart said that, "[I]t had been a hard year in 1989, and some of these (complaints) I just missed picking up." (Tr. 554.)

60. Upon return of the questionnaires, Calvary determined that approximately 105 persons desired home visits. Charlie Lampe was requested by Calvary to assist in the resolution of these complaints by making home visits. (Calvary Ex. 3, p. 14.) Mr. Lampe had been KOKS' contract engineer since early February 1989, responsible for routine and special maintenance of the station's equipment, but not for any problems relating to blanketing interference. (Calvary Ex. 1, p. 19 (Attachment A).) Mr. Lampe owns and operates "Charlie's TV Repair," selling TV sets and satellite systems and servicing and repairing television and radio sets, two-way radio receivers and satellite systems, for over 13 years. Mr. Lampe was, however, an independent businessman. He performed services for people in the blanketing contour. Mr. Lampe had worked for A-1 Electronics for approximately five years and as the Assistant Service Manager of Montgomery Ward for another two years before opening his own business. Mr. Lampe served as a contract engineer for KJEZ-FM for approximately ten years before becoming the contract engineer for KOKS and does engineering work for Hunt Broadcasting, the licensee of an AM-FM combination in Piedmont, Missouri. (Calvary Ex. 1, p. 1.)

61. According to Mr. Lampe, TV reception, generally, is poor in the Poplar Bluff area, and he was often asked to install special equipment such as boosters, special antennas, and filters on TV sets in the area to improve reception. According to Lampe, because Channel 6 is located far away and the station doesn't put a grade B signal into Poplar Bluff, reception of that signal is marginal. Also, according to Lampe, Channel 12 also puts a weak signal over Poplar Bluff. (Calvary Ex. 1, p. 2.)

62. All home visits were made by Calvary in February, 1991. (Calvary Ex. 3, p. 15.) Mrs. Stewart called and made an appointment to visit each house, and, in most instances, three people made the visit, Mr. and Mrs. Stewart and Mr. Lampe.[12] Mr. Lampe did all the work after Mrs. Stewart introduced the group, and Mr. Stewart served mostly as an observer. Mrs. Stewart was not aware of any limitation on the number of filters to be installed or on a limit of sets to be repaired. However, Mr. Stewart told Mr. Lampe to use only one filter per home, because he didn't know if there were enough filters to go around, and he was under an FCC deadline to eliminate interference. (Calvary Ex. 2, p. 9.) Nevertheless, more than one filter was used per set at a number of homes, including the Adams' and the Ellis'. Mr. Stewart also told Mr. Lampe not to install filters on portable sets, defined as "anything with rabbit ears or a handle." (Tr. 260.) Mr. Stewart believed portable sets were "mobile receivers" and were thus excluded, but he never asked his counsel for a definition of "mobile receiver." (Tr. 260-261, 757-758.) Mr. Lampe did, however, perform work on some portable sets. (Tr. 261.) Moreover, for a few complainants, Calvary, in order to improve reception, changed the wiring which connected a complainant's antenna and television set. The work Calvary performed was done at no cost to the complainants. (Tr. 260, 742; MMB Ex. 26, p. 1; MMB Ex. 27, p. 1; Calvary Ex. 2, p. 9.) According to Calvary, it did not refuse to repair any radio receivers when the complainant noted problems with their radio during the home visit, but complainants generally did not mention problems with their radio.

63. During the home visits, Calvary personnel told Smith, Jean Hillis, and Michael Beckham, operator of the Whispering Oaks Boarding Home, that Calvary was obligated to fix only one television set per residence. Further, Donald Stewart told Beckham that if Beckham wanted a filter for the second television he was planning to buy for the boarding home, he would have to pay $50.00 for the filter. Calvary also refused to attempt restoration of service to the radios of both Smith and Jean Hillis. The Hillises were told that if they wanted filters, they could buy them. (Tr. 957-959; MMB Ex. 2, pp. 4, 27; MMB Ex. 3, p. 4; MMB Ex. 9, pp. 4, 6-7.) Consistent with its questionnaire and its response to Smith, Jean Hillis and Beckham, Calvary did not inquire of other complainants whom it visited whether they had more than one television set or a radio subject to interference, nor did Calvary check its files to review prior complaints before going to the complainant's residence. (Tr. 516-517, 532-533, 571.)

64. Calvary submitted reports to the Commission dated February 12 and February 25, 1991, of its visits to the residences of complainants. Calvary stated that the Microwave filter it had used and installed, the FAS-Trap 5K FM-89.5, eliminated FM blanketing interference caused by KOKS. Calvary also claimed that it went beyond the Commission's requirements by eliminating FM blanketing interference to Channel 6. Finally, Calvary stated that the average cost per home visit was $65.00. The reports were silent as to the number of television sets per residence it had serviced and as to whether any filters had been installed on complainants' radios. (MMB Ex. 26, p. 1; MMB Ex. 27, p. 1.)

65. The reports submitted to the Commission by Calvary were furnished to some of the complainants and Smith, Jean Hillis, Beckham, and Fred and Marie Ellis, among others, specifically disputed Calvary's claims that their service had been restored. (MMB Ex. 2, pp. 27-28; MMB Ex. 3, pp. 4-5; MMB Ex. 9, pp. 6-7; MMB Ex. 30, pp. 5-6.) In addition, Sandra Durbin, Clara Freeman, Joanne Gray, Mary Wynn, and Leatha Piper pointed out that their complaints had not even been addressed by Calvary during the licensee's 1991 visits to restore service. (MMB Ex. 5, pp. 14-15; MMB Ex. 6, pp. 8-9; MMB Ex. 7, pp. 14-15; MMB Ex. 10, pp. 18-19; MMB Ex. 29, pp. 9-10.) Finally, Marie Christian complained that, although she had three television sets, Calvary installed a filter on only one set. (MMB Ex. 1, p. 49.) Except with respect to Wynn, Calvary does not appear to have responded to the complaints noted above or that it attempted any further repairs. (Tr. 536-537.)

[12] Mr. Stewart suffered a stroke during this process and did not make visits after that. (Tr. 376-377.)

66. During its home visits, Calvary never turned the KOKS transmitter off to compare television reception with KOKS on and off the air. In addition, Calvary's personnel almost never discussed with complainants what their reception looked like before KOKS came on the air or how their reception with Calvary's filters compared with their reception prior to the advent of KOKS. Thus, Calvary's reports that an interference complaint had been resolved was based almost entirely on its own assessment of its repair efforts. (Tr. 427-428, 462, 507, 517, 574, 588-589.) According to Mrs. Stewart, when she reported a complaint "resolved," she believed that the complaint was resolved even if the complainant was dissatisfied with reception of Channel 6, because she did not believe Calvary was responsible for restoring reception of Channel 6. (Tr. 614.) Mrs. Stewart acknowledged that there might have been errors or misunderstandings when she believed a complainant was satisfied when they were not, but Mrs. Stewart was also dealing with almost a thousand complaints. Mrs. Stewart conceded that some mistakes were made in determining who might be within and without the blanketing contour, such as the Ellises.

67. After reviewing Calvary's reports and the responses of various complainants, the Mass Media Bureau requested that the Kansas City FOB investigate the continued complaints of KOKS blanketing interference. From February 10 through February 14, 1992, the Kansas City FOB engineers, Ronald Ramage and Mike Gusick, visited the residences of 14 complainants, including Doris Smith, Jean Hillis, Joanne Gray, Clara Freeman, Sandra Durbin, Leatha Piper, Mary Wynn, and Fred and Marie Ellis. While at each residence, Ramage had Calvary turn off the KOKS transmitter so that he and Gusick could observe the differences, if any, to television reception. (Tr. 890-891; MMB Ex. 1, pp. 9, 11, 28.) Ramage prepared a report on the KOKS blanketing interference under the date of February 21, 1992. (MMB Ex, 1, p. 5.)

68. Mr. Ramage's report noted that it was now impossible to determine the quality of reception the complainants received prior to KOKS going on the air because of the elapse of time, the various new television and radio stations on the air, and changes in the complainants' receiving equipment. Ramage also noted that the complainants were attempting to receive stations that were 68-86 miles distant and separated by up to 174 degrees, resulting in a very low signal reaching the television receiver to begin with. (MMB Ex. 1, p. 9.) WPSD-TV, Paducah (Channel 6) is 86 miles distant from the KOKS tower on a bearing of 68 degrees; KAIT-TV (Channel 8) is 69 miles distant on a bearing of 199 degrees; and KFVS-TV (Channel 12) is 68 miles distant on a bearing of 47 degrees. (MMB Ex. 1, p. 58.) Ramage reported that the installation of filters, coax cable, and other equipment leads to a loss in the signal reaching the television set, so that all complainants told him that they received better reception prior to KOKS going on the air than they now receive when KOKS stopped transmissions. (Tr. 872.) Ramage also reported that many of the complainants indicated that the KOKS filters quit working after a few weeks. According to Ramage, it was not common, in his experience, for filters to fail, and the filters that he knew of which did fail were tunable filters, not filters like those used here. (Tr. 847, 849.) Mr. Ramage found it unreasonable to assume that the station would increase power for the purpose of making the filters fail. (MMB Ex. 1, pp. 10-11.)

69. Some of the complainants were not convinced that KOKS had gone off the air for testing, and asked Ramage to check this and a certain activity by the station at the transmitter site. Ramage found that the station was off the air during testing, and the activity at the site consisted of removing the old 4-bay antenna from the shed for shipping to the manufacturer. Ramage further reported that some complainants were disappointed when their reception did not clear up when KOKS went off the air. (MMB Ex. 1, p. 12.) Mr. Ramage identified Mrs. Smith and Mrs. Hillis as among those disappointed when there was not much change in their television reception when KOKS went off the air. (Tr. 865.)

70. Mr. Ramage's report included information on each visit to a complainant's residence using observations of the picture received on each set using the TASO system. The TASO system is a system adopted in the early 1950's which labels picture quality. (Tr. 811.) There is no standard for a TASO picture quality, and the result is somewhat subjective. (Tr. 811, 813-814.) Mr. Ramage reviewed a tape produced by the FCC's training center in Norfolk, Virginia, before he went to Poplar Bluff which showed what a different level TASO signal looked like, but he does not believe that Mr. Poole did this before his visit to Poplar Bluff. (Tr. 811-812.) The difference in the quality of a picture between one TASO reading and the one right below or above it was not very significant. (Tr. 863.)

71. According to Ramage, in an instance of a very weak signal, blanketing interference would be just snow and indistinguishable from other interference, although generally snow on a screen is usually the result of a weak signal. (Tr. 824, 894.) When blanketing interference would be indistinguishable from other interference, however, the picture would have to be very poor, in the range of a TASO 4 to a TASO 6 picture. (Tr. 896.) Mr. Ramage described a TASO 4 as ". . . has quite a bit of interference in the background"; a TASO 5 as ". . . severe interference, but you can still see a picture"; and a TASO 6 is no picture at all. (Tr. 812.) Because the TASO scale is subjective, only a TASO 6, which is no picture at all, is considered unwatchable. (Tr. 814.) When Ramage reported that KOKS had failed to restore reception, he was relying primarily on the statements of the complainants themselves, as well as the change in reception when KOKS went off the air. (Tr. 862.)

72. In reporting on his visit to the Smith home, Mr. Ramage noted that KOKS failed to restore reception. This was based primarily on the reports of Mrs. Smith, because the difference between Mrs. Smith's reception with KOKS on and off the air was not significant, a fact that "disappointed" Mrs. Smith. (Tr. 862, 865.) Mr. Ramage reported that Mrs. Smith wouldn't believe that KOKS was off the air even when confirmed by the use of a spectrum analyzer because the red light on her stereo remained lit. (MMB Ex. 1, p. 29.) Mr. Ramage's report noted that only one television set, a portable, showed a "fairly slight improvement" when KOKS was not transmitting. (Tr. 867.) The improvement noted was a change from a TASO 6 to a TASO 5-6 on Channel 8, and a change from a TASO 4 to a TASO 3 on Channel 12. Mr. Ramage noted KOKS audio in all sets at the Smith residence, and also at the Hillis' residence, but at none of the other homes he visited. (Tr. 877, 879, 882.)

73. At the Hillis residence, Mr. Ramage noted only a very slight difference between television reception with KOKS on and off the air, a result that disappointed Mrs.

Hillis. (Tr. 865, 868.) The observed differences in signal with KOKS on and off the air were a change from a TASO 5 to a TASO 4 on Channel 6 on one television; from a TASO 6 to a TASO 5 on Channel 6 on the other television set; from a TASO 6 to a TASO 5 on Channel 8 on one set, and a TASO 6 to a TASO 6 on Channel 8 on the other television set; from a TASO 3 to a TASO 3 on Channel 12 on one set, and a TASO 4 to a TASO 4 on Channel 12 on the other set. (MMB Ex. 1, p. 31.) Mr. Ramage did not observe the distinctive herringbone pattern that is indicative of blanketing interference at the residence. (Tr. 868.)

74. At the Diel residence, Mr. Ramage noted that the station had not restored reception at the time the complaint was filed. However, the observed reception on three different televisions showed that only one channel, Channel 15, was affected by KOKS being on the air, and only the slight difference between a TASO 5 and a TASO 4 picture. (Tr. 871; MMB Ex. 1, p. 33.) The report noted that since lodging the complaint, Diel installed a new antenna and coax cable. As a general matter, the use of coax cable rather than twin lead wires reduces the signal strength to the television set, and the already weak television signals are not strong enough to produce a good picture. Also, the use of a filter reduces the signal strength. (Tr. 811-873.) No herringbone lines of blanketing interference were observed at the Diel home. (Tr. 871.)

75. Ramage reported that at the Wynn residence, KOKS installed filters on two television sets (MMB Ex. 1, p. 35); that the installation of a notch filter by Calvary "improved but did not completely restore quality of television reception"; that the filter quit working after a couple weeks"; and that the quality of the picture with KOKS off the air improved to a TASO 4 from a TASO 6 for Channel 6, and to a TASO 4-5 from a TASO 5 for Channel 8. The picture quality decreased from a TASO 2 to a TASO 3 for Channel 15 with KOKS off the air. (MMB Ex. 1, p. 35.)

76. Mr. Ramage's report on Mrs. Piper noted that she purchased and had installed coax cable and two Archer FM traps by Mr. Lampe, KOKS' contract engineer. The quality of her reception was unaffected by the operation of the KOKS transmitter. (MMB Ex. 1, p. 37.) At Mrs. Libla's home, Mr. Ramage noted that there was no apparent change in picture quality when KOKS stopped transmitting, and that Mrs. Libla had installed a satellite dish. If there was any change in picture quality with the KOKS transmitter operating, it was only on Channel 6, which improved from a TASO 6 to a TASO 5 with KOKS off the air. No herringbone pattern indicative of blanketing interference was observed on the Libla set. (Tr. 875-876; MMB Ex. 1, p. 39.)

77. Mr. Ramage reported that KOKS did not restore reception for the Kearbeys at the time the complaint was filed, but this was based solely on what the Kearbeys told him. (Tr. 874.) The quality of the Kearbeys' reception was the same whether KOKS was operating or not. (MMB Ex. 1, p. 41.) Mr. Ramage did not see any herringbone patterns in the Kearbey set. (Tr. 876.)[13]

78. In his report, Ramage stated that KOKS failed to restore the quality of the television and radio reception at Mrs. Gray's residence at the time she made her complaint. Since then, Mrs. Gray has purchased a new television receiver and a satellite receiving system. When viewing off the air signals, the quality of the picture improved when KOKS discontinued transmissions. Specifically, Channels 6, 8, and 15 improved on one set from a TASO 6, 6, and 3 to a TASO 4-5, 5, and 2 with KOKS off the air. On a second set, there was improvement on Channel 8 from a TASO 6 to a TASO 5-6, and on Channel 15 from a TASO 3 to a TASO 2 when KOKS was off the air. (MMB Ex. 1, p. 43.)

79. Ramage reported that KOKS failed to restore the quality of the picture reception at the Freeman's residence at the time the complaint was filed. Since then, the complainant's twin lead wire had broken loose from the directional antenna resulting in poor reception on an Emerson television set.[14] On the other set, which uses a booster amplifier, the quality of the picture when KOKS stopped transmitting greatly improved. Specifically, on this set reception of Channels 6 and 8 improved from a TASO 6 and 5, respectively, to a TASO 4 and 4, respectively, when KOKS was off the air. Reception of Channels 12 and 15 was unchanged with KOKS off the air. (MMB Ex. 1, p. 45.)

80. The Ramage report states that KOKS installed a notch filter on a VCR and on one television, but refused to install a filter on the downstairs television set at the Ellis' residence. Mrs. Ellis then purchased a notch filter which was installed on an Emerson television set. Approximately one week before the visit by Ramage in February 1992, the Ellises paid Lampe, the KOKS engineer, to install a channel master amplifier which the Ellises said greatly improved the quality of reception. The report indicates that reception on Channel 8 improved from a TASO 4 to a TASO 3 with KOKS off the air. Otherwise, the quality of reception was unchanged with KOKS off the air. (MMB Ex. 1, p. 47.)

81. KOKS did not restore reception at the Christian residence at the time the complaint was filed. It only installed one filter on a television set in Mrs. Christian's residence and would not provide more than one filter. The reception on the set with the filter when viewed by Ramage was indistinguishable whether or not KOKS was on the air. There was improvement in the quality of reception on other sets with KOKS off the air with TASO quality generally improving a notch, *i.e.*, from 4 to 3, or 5 to 4 on two channels. The Christians are reported to have remodeled their residence adding several TV outlets, a booster amplifier, a notch filter, and a rotor. (MMB Ex. 1, p. 49.) According to Mrs. Stewart, Mrs. Christian called shortly after KOKS went on the air, and she had a booster and a preamplifier at that time. (Calvary Ex. 3, p. 24; MMB Ex. 17, p. 32.)

82. At the residence of Mr. Garrison, Ramage noted that the only improvement in reception quality with KOKS off the air was with Channel 6 which went from a TASO 6 to a TASO 4 with KOKS off the air. It was also reported that KOKS failed to restore the quality of picture reception; that KOKS tried one filter on the television and that when it did not work, it was removed. (MMB Ex. 1, p. 51.) The reception at the Crutchfield residence improved on one television set when KOKS was off the air. Specifically, the quality of reception of Channel 6 improved from a TASO 4 to a TASO 3 when KOKS was off the air. Reception on two other television sets was the same with or without

[13] The Kearbeys changed residences from the time of their first complaint to the time of the Ramage visit. Both residences were within the blanketing contour of KOKS. (MMB Ex. 1, p. 41.)

[14] The only improvement with KOKS off the air on this set was with respect to Channel 15 which went from a TASO 4 to a TASO 3.

KOKS on the air. Crutchfield, on his own, installed a notch filter and booster to improve reception. (MMB Ex. 1, p. 53.)

83. Ramage reported that KOKS did not restore the quality of picture reception at the residence of Sandra Durbin. While KOKS installed a filter, Durbin removed it because reception was better without it. The quality of reception improved with KOKS off the air. Specifically, Channels 6 and 8 went from a TASO 6 with KOKS on the air to a TASO 4 and 5-6, respectively, with KOKS off the air. Also, Channels 12 an 15 went from a TASO 4 and 4, respectively, to a TASO 3 and 2, respectively, when KOKS was off the air. (MMB Ex. 1, p. 55.)

84. To summarize, Ramage concluded that Calvary had not restored television or radio reception to the level enjoyed by the complainants prior to the commencement of operations by KOKS. Ramage based his conclusion on the following factors: the licensee generally placed one filter on only one television set per residence; the licensee did not address problems with portable television receivers and radio receivers; the licensee did not compensate for the fact that the steps taken to eliminate KOKS interference reduced the level of desired signals reaching the television receiver; there were observed differences in the quality of television pictures received by some of the complainants with KOKS on and off the air; the licensee failed to reimburse complainants who undertook to restore their television reception at their own expense; and that complainants asserted that their picture quality was better before KOKS began broadcasting in 1988 than it was in 1992 with KOKS off the air. (Tr. 861-862, 871-873, 884-888; MMB Ex. 1, pp. 9-10, 13, 29, 31, 33, 35, 37, 39, 43, 45, 47, 49, 51, 53, 55.) Ramage also found that the licensee did not take the steps viewed by its own engineer as necessary to restore television reception. (MMB Ex. 1, p. 11.)[15]

85. In the *HDO*, the Commission stated that Calvary's obligation to restore reception of Channel 6 was no different from its obligation to restore service to other channels viewed by complainants before KOKS began operations. However, Calvary has taken no additional steps to restore reception of Channel 6, nor has it informed those within the blanketing contour of its obligation to do so. (Tr. 585-586, 760.)

86. Prior to the release of the *HDO*, Calvary believed it had no obligation to restore Channel 6 service. Indeed, Mrs. Raines of the FCC Kansas City FOB was also of this view, because she told that to Mrs. Smith and Mrs. Hillis. (Tr. 937, 1007.) Mr. Clark Poole, an FCC inspector who conducted an investigation of the blanketing interference and inspected the station in May of 1989, did not believe Calvary had to cure interference to Channel 6 because Channel 6 did not put a grade B signal over Poplar Bluff. (Calvary Ex. 5, p. 3.) Poole told Charles Lampe, Calvary's contract engineer, during the station inspection that the station "didn't need to worry about Channel 6." (Calvary Ex. 1, p. 8.) Mrs. Smith and Mrs. Hillis were told the same thing. (Tr. 929-930, 1010.) Mrs. Smith and Mrs. Hillis made reference to the fact that "Channel 6 is not an authorized station for this area . . ." in one of the petitions they distributed. This view was based on Mr. Poole's and Mrs. Raines' comments. Mr. Ramage was not aware of any instance in which the FCC required a station to resolve complaints of blanketing interference to the reception of a station beyond the station's grade B contour. (Tr. 856.) Channel 6 itself did not believe that it had the legal right to complain of KOKS interference to its signal in Poplar Bluff. (Calvary Ex. 3, p. 44 (Attachment B).)

Ineptness Issue

87. In specifying an ineptness issue against Calvary, the Commission noted four apparent violations from the Ramage report concerning his inspection of Station KOKS which warranted consideration in this proceeding. These matters concerned the station's operating power, the station's antenna, the lighting of the station's tower, and the station's public file. (*HDO*, 7 FCC Rcd (1992) at 4040-4041.) The Bureau reached a stipulation with Calvary, which was filed on September 18, 1992, that Calvary's change from a 4-bay to a 7-bay antenna did not violate Section 73.1690(b) of the Commission's Rules. In addition, the Bureau and Calvary reached a stipulation, which was entered into the record on November 17, 1992, that the placement of Calvary's tower lights did not constitute a violation of the Commission's Rules. (Tr. 144.)

Transmitter Power

88. During the February 10, 1992, inspection of Station KOKS, the Kansas City FOB engineers Ramage and Gusick observed transmitter readings for plate voltage and plate current which indicated that the station's transmitter was operating at 64 percent of authorized power. At the same time, however, the transmitter also showed a digital power reading of 95.1 percent of authorized power. (Tr. 700; MMB Ex. 1, p. 6.) The station's logs showed a similar pattern in the readings dating back to at least January 1, 1991. (MMB Ex. 1, pp. 18-26.) Thus, it was unclear whether the station had been operating within the limitations prescribed by Section 73.1560(b) of the Commission's Rules, which states, in pertinent part, that "[T]he transmitter output power . . . must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90 percent nor more than 105 percent of the authorized power."

89. Ramage informed Donald Stewart and station engineer Lampe that there was a significant unexplained discrepancy between the two means for measuring transmitter output power. Neither Stewart nor Lampe had been aware that there was such a discrepancy until Ramage brought it to their attention. Mr. Lampe told Mr. Ramage that there was a warning in the Harris transmitter manual that the plate current meter reading could be incorrect if there was damage to the system by, perhaps, a lightning strike, as there had been many at KOKS. Lampe thereupon called the transmitter manufacturer who informed him that either the plate current reading or the percentage of power indication was incorrect. Subsequently, Lampe ascertained that the plate current reading was faulty. On February 28, 1992, Lampe corrected the problem by replacing a diode, and the meter reading returned to normal. Thereafter, there have been no discrepancies between the

[15] Lampe, when asked how he would restore reception, told Ramage that he recommended a very high gain antenna, coax cabling, rotor, and high quality filter or filters. (MMB Ex. 1, p. 11.)

two means for measuring transmitter output power. On March 25, 1992, Calvary informed the Commission that the noted repairs had been made. (Tr. 706-708; MMB Ex. 1, p. 7; MMB Ex. 28; Calvary Ex. 1, p. 16.) Ramage described the station's response as "satisfactory." (Tr. 713.)

90. For various reasons, Calvary periodically operated its transmitter at less than 90 percent of its authorized power. During those periods when Calvary was so operating, it eventually notified the Commission. Specifically, by letter dated November 3, 1988, Calvary informed the Commission that, following an antenna fire, KOKS was operating at one-third of the station's authorized effective radiated power. Moreover, by letter dated December 27, 1988, Calvary stated that, from late October until the last week in November, it had been operating at roughly 50 percent of authorized power to assist in the resolution of complaints of blanketing interference. Because of the pending complaints as well as damage caused by gunshots to its coaxial cable, Calvary requested that it be allowed to operate marginally below 90 percent of authorized power pending repair of the cable and resolution of the blanketing complaints. Additionally, in the summer of 1989, Calvary obtained special temporary authority to operate KOKS at 55 percent of authorized power following an apparent lightning strike to its antenna. (Calvary Ex. 3, pp. 12-13; Calvary Ex. 8; Calvary Ex. 9.)

91. The record reflects at least one instance where Calvary operated outside the parameters prescribed in its license. Specifically, according to Craig Meador, in the winter of 1989, before Lampe became the station's engineer, Donald Stewart showed Meador the KOKS transmitter which, at the time, was operating in excess of 110 percent of authorized power. Stewart told Meador, who was on the Stewarts' property to repair their satellite system, that he was trying to reach Memphis with the KOKS signal. (Tr. 1020-1021, 1025-1027, 1034; MMB Ex. 11, p. 2.) Although Stewart acknowledged that Meador was at the Stewart's residence, he said Meador was there in the summer of 1988 before KOKS began broadcasting and not in the winter of 1989. Stewart first denied that Meador had been in the transmitter building with him, then said that he had, but quickly recanted such testimony. (Tr. 1108, 1111, 1114.)

Public File

92. From the time Calvary obtained its construction permit for KOKS until the first Commission inspection of KOKS in May 1989, Calvary did not maintain a complete public file. Specifically, Calvary did not have in its public file a copy of "The Public and Broadcasting: Revised Edition," as required by Section 73.3527(a)(6) of the Commission's Rules, nor did it have quarterly lists of programs which dealt with community issues, as required by Section 73.3527(a)(8) of the Commission's Rules. (Calvary Ex. 5, p. 5.) However, once the matter was brought to its attention during Mr. Poole's inspection in 1989, Calvary took steps to have a complete public file. By the time of the second Commission inspection in December 1989, Calvary apparently had all the documentation required by the Commission's public file rules. (Calvary Ex. 3, pp. 30-31; Calvary Ex. 6, p. 22.)

93. During the February 1992 inspection of Station KOKS, Mr. Ramage, of the FCC Kansas City office, asked Nina Stewart to produce the KOKS public file for his review. Among other things, Ramage asked to see the station's lists of programs which dealt with significant community issues. In response, Nina Stewart produced a three-ring binder which contained the station's issues/programs lists. After reviewing one of the lists, Ramage told Mrs. Stewart that the list needed the date it was placed in the public file. Beginning with the list for the first quarter of 1992, Calvary has noted the date when the list was placed in the station's public file. (Tr. 800-801, 1083-1087; Calvary Ex. 3, p. 30; Calvary Ex. 13.)

94. Ramage also asked Nina Stewart to produce a list of donors which support specific programs. Nina Stewart responded that the station did not have such a list and explained that the station's donors supported all of KOKS' programs. Apparently, however, Calvary did have a list of general donors, which included entities that contributed money to Calvary in conjunction with the broadcast of that entity's program on KOKS. According to Nina Stewart, this list was in existence and in the files of the station since Poole's visit in 1989 when she was told about the rule which required it. Nina Stewart did not answer Ramage's question correctly or show Ramage the station's list of donors because she was "flustered." (Tr. 799, 803, 1088-1089; MMB Ex. 1, p. 8; Calvary Ex. 3, pp. 30-31; Calvary Ex. 12.)

95. Finally, Ramage asked Nina Stewart for the station's file which contained requests for time from political candidates. Mrs. Stewart told Ramage that Calvary had no such file. According to Ramage, Nina Stewart acknowledged that the station had received a few requests for time from state or local office candidates, but none from candidates for national office. It was her understanding that the station only had to retain requests for time from national office seekers. (Tr. 805-807; MMB Ex. 1, pp. 7-8; Calvary Ex. 3, p. 31.) However, according to Stewart, no political file was maintained because prior to Ramage's visit, no request for time was made by a political candidate. (Calvary Ex. 3, p. 31.)

ULTIMATE FINDINGS AND CONCLUSIONS OF LAW

96. This proceeding involves the application of Calvary Educational Broadcasting Network, Inc., for renewal of license of Station KOKS(FM) in Poplar Bluff, Missouri. The application was designated for hearing primarily because of repeated complaints by residents of the station's failure to remedy blanketing interference caused by KOKS. Among the issues designated for hearing, other than alleged violations of Section 73.318 of the Commission's rules (FM blanketing interference), were alleged misrepresentations or a lack of candor regarding the extent and success of the station's efforts to correct the blanketing interference; and whether the licensee's operation of the station was so negligent, careless, or inept or evidenced such disregard for the Commission's rules that it cannot be relied upon to fulfill its responsibilities. Moreover, the *Hearing Designation Order* (*HDO*), alternatively, also provided for the possible imposition of a forfeiture for violations of Sections 73.318 (FM Blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements). These alleged violations were detected during the course of a Commission inspection of the station, and the ineptness issue is predicated on these alleged violations.

97. By far, the most important issues deal with the violation of the Commission's blanketing rule and the licensee's alleged misrepresentation or lack of candor regarding the extent and success of its efforts to correct the blanketing interference. Indeed, by stipulation the parties agreed that there was no violation of Section 73.1213 regarding tower lighting and painting.[16] Furthermore, it is well settled that ineptness by an applicant will not be deemed disqualifying unless the conduct in question concerns relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence. *Edward G. Atsinger, III*, 29 FCC 2d 443, 449 (1971); *Folkways Broadcasting Co., Inc.*, 26 FCC 2d 175, 179 (1970). The shortcomings and derelictions noted by the FCC engineers during the inspection in February 1992, were neither major or indicative of a pattern of conduct sufficient to justify the disqualification of the licensee on the ineptness issue.

98. Section 73.318(b) of the Commission's Rules places a duty on new stations causing FM blanketing interference to "satisfy all complaints of blanketing interference which are received by the station during a one year period" beginning with the commencement of program tests and which are received from complainants who reside within the station's 115 dBu blanketing contour. Resolution of complaints shall be at no cost to the complainant.[17] In addition, pursuant to Section 73.318(d), the station must provide complainants filing after the one year cutoff point, as well as complainants residing outside the blanketing contour, with "technical information or assistance" in solving the problem. While mobile receivers and high gain antennas or antenna booster amplifiers are excluded from the provisions of Section 73.318, a station's duty to complainants residing within the 115 dBu, who filed timely complaints, is to repair all radio and television receivers.

99. It is thus clear that an FM broadcaster has certain obligations with respect to complainants of blanketing interference. These obligations vary according to the location of the complainant, the equipment affected, and the timing of the complaint. Thus, for persons who reside within the blanketing contour and who first complain during the initial year of an FM station's operations, the broadcaster has a duty to restore service to protected equipment, namely, televisions, radios and satellite dish antennae without cost to the complainant. For persons whose initial complaint occurs after the station's first year of operation or who reside outside the blanketing contour, the broadcaster must provide information or assistance to complainants on remedies for blanketing interference.

100. The purpose of the rule is to protect those living near an FM radio tower from the adverse effects that a new or more powerful FM radio station can cause to television and radio receivers. These effects can vary from complete blockage of desired signals to a reduction in receiver sensitivity. *Notice of Proposed Rulemaking in BC Docket No. 82-186*, 47 Fed. Reg. 28936, published May 3, 1982. Thus, a broadcaster should carefully select a transmitter site to minimize disruption to the reception of existing television and radio stations and correct blanketing interference problems caused to television and radio receivers of individuals within the blanketing contour who complain within one year.

101. The Stewarts decided to locate the antenna for KOKS in their own backyard, there being no zoning restrictions preventing the erection of a radio tower. This, as it turned out, was a terrible mistake. First, the Stewarts lived in an area that while not heavily populated, was nevertheless sufficiently populated in that there were some 220 persons residing within the station's blanketing contour. Not only was the advent of blanketing interference a distinct possibility, but in addition thereto the erection of a radio tower in a residential neighborhood was considered an eyesore to the Stewarts' neighbors and perceived to depreciate property values. Under these circumstances, the deluge of blanketing complaints when KOKS first went on the air was not unpredictable.[18] Unfortunately, the Stewarts were farmers, not broadcasters, and the danger of blanketing interference was never explained to them by their consulting engineer. They did not know what it was or how to correct it.

102. Shortly after KOKS began broadcasting, blanketing interference complaints were filed with the station, and the Kansas City office of the FCC. In response, the Kansas City office notified KOKS of the station's obligations under the Commission's rules and possible ways to correct blanketing interference complaints. Unfortunately, the Stewarts did not respond fully, aggressively, or effectively in resolving the numerous blanketing complaints submitted to the station and reported to the FCC.

103. The licensee and the Bureau disagree on the nature and extent of the violations of Section 73.318, the Commission's blanketing rule. But it is clear from the record that the station did not comply with the requirements of the rule in dealing with the blanketing complaints. Specifically, when blanketing complaints were first received shortly after KOKS commenced operations, the station first attempted to solve the problems by installing "string filters," but they did not work and failed to satisfy the complainants. (*See*, paragraph 18 of Findings.) Moreover, the station generally would not satisfy complainants with boosters even if some of the complainants' television sets were not connected to the booster. (*See*, paragraphs 17 and 21 of Findings.) Furthermore, the station did not initially retain any engineering personnel to assist in the process of addressing the blanketing complaints. The task of dealing with the problem was assumed by Mrs. Stewart who, with the aid of a volunteer, made home visits commencing in November 1988. Being inexperienced and untrained in eliminating blanketing interference and being either unwilling or unable to expend the necessary funds, Mrs. Stewart did not satisfy many of the complainants' blanketing problems. Specifically, the following individuals, among others, who lived within the blanketing contour and timely complained of blanketing interference to television reception, were not satisfied by the efforts of the station: Doris Smith, William and Jean Hillis, Mary Wynn,

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[16] The parties also stipulated that there was no violation of Section 73.1690(c) regarding the change from a four-bay directional antenna to a seven-bay directional antenna. *See*, paragraph 8 of the *HDO*.

[17] These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers or improperly installed antenna systems. Section 73.318(b).

[18] As will be discussed later, Poplar Bluff is in an area where television reception was considered poor at best. Indeed, the Stewarts had a satellite dish to obtain television reception.

Mrs. Joanne Gray, and Dairel Denton, Jr. On some of the television sets of these individuals, KOKS audio was in the background of one or more channels, a clear sign of blanketing interference. KOKS' failure to satisfactorily address the television blanketing interference complaints of these individuals constituted violations of Section 73.318 of the Commission's rules. Equally important, the station generally installed only one filter in each home. Thus, even if a home had three television sets impacted by KOKS' blanketing interference, the station would only install one filter on one of the sets. The others remained unattended. While there were some exceptions to this policy, and more than one filter was installed in some of the homes, the president of the licensee, Mr. Stewart, for economical reasons, *inter alia*, told Mr. Lampe to use only one filter per home. (*See*, paragraph 62 of Findings.) Also, Mr. Stewart instructed Lampe not to install filters on portable sets, which Stewart defined as "anything with rabbit ears or a handle," because he believed these were "mobile receivers" not included within the purview of the blanketing rule. Lampe, nevertheless, performed work on some portable sets. These limitations on the effort of KOKS to satisfy blanketing complainants were simply not in keeping with the requirements of the Commission's blanketing rule.

104. Moreover, the station failed to satisfy complaints regarding blanketing interference to radio reception. While these complaints were not as great as complaints regarding television blanketing, the station, nevertheless, generally did not address them. Thus, while Joanne Gray, Mrs. Wynn, Durbin, Denton, Cindy Diel, Willard Garrison, Karen McCullen, among others, complained about blanketing interference to their radios, KOKS failed to satisfy those complaints. (*See*, paragraphs 24, 37, and 45 of the Findings.) Nor did KOKS satisfy the complaints of Hillis and Smith regarding blanketing interference to their radios. These failures constitute additional violations of Section 73.318 of the Commission's rules.

105. This is not to suggest that the station did nothing regarding the blanketing interference. Mrs. Stewart made many home visits, some repeated, and different type filters were installed in an effort to cure the television blanketing interference. However, those efforts were, for the most part, ineffectual and failed to satisfy many of the individuals who complained of blanketing interference.[19]

106. The task of satisfying the individuals who complained of blanketing interference was complicated and made more difficult because the television reception in the Poplar Bluff area is generally poor. In this connection, the residents of Poplar Bluff generally watch television signals which emanate from distant and varied locations. Specifically, Channel 6 (WPSD-TV) is located in Paducah, Kentucky, 86 miles from Poplar Bluff on a bearing of 68 degrees; Channel 8 (KAIT-TV) is 69 miles distant on a bearing of 199 degrees; and Channel 12 (KFVS-TV) is 68 miles distant on a bearing of 47 degrees. The signal strength of these television signals were weak in Poplar Bluff and Mr. Poole, the first Commission engineer to investigate the blanketing complaints, reported that the main problem with KOKS was that "they exist close to complainants who have received substandard television signals with good results for many years." Moreover, it appears that the quality of television reception varied depending, in part, on atmospheric conditions.

107. The ability of KOKS to satisfy some complainants was further diminished because the utilization of filters, coax cable and other equipment installed to correct the blanketing interference led to a loss of signal strength reaching the television set thereby further reducing the strength of television signals that were weak to begin with. Thus, the reception of television sets with filters was not as good as before KOKS went on the air. Because the reception of the television signals improved only slightly when KOKS was off the air during tests conducted by FCC engineers, some complainants questioned whether KOKS was, in fact, off the air. Indeed, in the tests conducted by FCC engineers to determine the difference in the quality of television reception with KOKS both on and off the air, the improvement witnessed was only slight or negligible when KOKS was off the air. Stated simply, there was not a significant improvement in the quality of television reception with KOKS off the air.

108. The station estimated that about 60 percent of the blanketing complaints related to Channel 6. This is a station which fails to place a Grade B contour over Poplar Bluff and KOKS reasonably believed it had no obligation to cure the blanketing interference to the station. Such belief was based on advice the station received from its engineer and legal counsel. Additionally, the station, in its reports to the FCC, stated that it had no obligation with respect to Channel 6 because it did not place a Grade B signal into Poplar Bluff and was not advised otherwise by the FCC. In this connection, an FCC representative informed Smith and Hillis that the Commission could not require correction of blanketing problems for signals that did not make the Grade B contour. Indeed, as late as the Commission's letter of April 27, 1990, KOKS was advised that the Commission has as yet made "no final determination in this case concerning the types of service interruptions that fall within the ambit of the Commission's blanketing rule, 47 C.F.R. 73.318." Finally, in the *HDO* in this proceeding, the Commission told KOKS that the "FM blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations." This was the first time the licensee was advised that it had a responsibility to correct blanketing interference to Channel 6. Under these circumstances, KOKS cannot be faulted for its failure to correct blanketing problems affecting Channel 6.[20]

109. The second issue seeks to determine whether Calvary "misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct blanketing interference problems. Misrepresentation involves false statements of fact made with an intent to deceive. Lack of candor involves concealment, evasion and other failures to be fully forthcoming. Both represent deceit, differing only in form. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983).

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[19] KOKS did not deal with the blanketing complaints aggressively when they were first reported. Indeed, the assistance of a qualified television repairman was not obtained until after the Commission's October 1990 letter.

[20] KOKS made no effort to correct the problem after the release of the *HDO* explaining that the case was in litigation, the complainants would be likely witnesses and hostile to its efforts, and that it was unreasonable to expect the station to undertake an expensive and extensive effort to correct Channel 6 problems while engaging in a renewal hearing.

110. The Commission expects absolute candor on the part of Commission licensees and applicants. *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (1987), *affirmed in pertinent part*, 4 FCC Rcd 2553 (1989), *reconsideration denied*, 4 FCC Rcd 6312 (1989); *Mid-Ohio Communications, Inc.*, 104 FCC 2d 572 (1986), *review denied*, 5 FCC Rcd 940 (1990), *reconsideration dismissed in part, denied in part*, 5 FCC Rcd 4596 (1990). Indeed, ". . . the trait of 'truthfulness' is one of two key elements of character necessary to operate a broadcast station in the public interest." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1210 (1986). Because of the Commission's limited resources, its system of regulatory control must, of necessity, routinely rely upon the representations of its licensees. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (1990), *reconsideration denied*, 5 FCC Rcd 3727, 3729 (1990), *review denied*, 6 FCC Rcd 2604, 2605 (1991).

111. The Bureau argues that in addition to willfully and repeatedly violating the blanketing interference rule, Calvary misrepresented facts to the Commission regarding its efforts to resolve blanketing interference and lacked candor in failing to report to the Commission that particular complaints reported as having been resolved were later found to be unresolved. Specifically, the Bureau argues that Calvary lied when it reported in its September 22, 1989, letter that the complaints of Durbin, Gray, and Wynn were resolved; that it lacked candor when it stated in its letters of December 6, 1988, and June 24, 1989, that Smith's blanketing problems were not solved because she would not cooperate; and that Calvary provided incomplete and misleading information in response to Commission inquiries regarding blanketing complaints.

112. The September 22, 1989, letter submitted by Calvary to the Commission stated with respect to Sandra Durbin that "on a visit to Ms. Durbin's home, blanketing interference was observed on Channels 8 and 12. A filter was installed to improve reception." (MMB Ex. 21, p. 9.) With respect to Gray, the letter stated that "[B]lanketing interference was observed on Channels 6 and 8. A filter was installed that cured the blanketing interference on Channel 8." Regarding Wynn, the letter indicated that:

> Mrs. Wynn complained of interference on Channels 6, 8, 12, and 15. KOKS personnel visited the home in January and did not see any evidence of any blanketing or other interference on any channel except Channel 6. A filter was installed on Mrs. Wynn's set in January and improved reception on all channels except Channel 6. Mrs. Wynn was dissatisfied with this result. KOKS personnel visited Mrs. Wynn's home again in April and installed a 750 Hm FM trap. Reception on Channels 8, 12, and 15 was very good. Channel 6 still did not come in, and Mrs. Wynn remained unsatisfied.

Thus, contrary to the Bureau's argument, Calvary did not report that it had cured or resolved Wynn's problem. Indeed, it clearly reported that Wynn was dissatisfied. Moreover, with regard to Gray, there was no claim that the blanketing interference to Channel 6 was satisfactorily resolved. Finally, with respect to Durbin,[21] it was merely reported that a filter was installed to improve reception to Channels 8 and 12. These representations cannot be viewed as deliberate misrepresentations of fact designed to mislead the Commission.

113. Moreover, whether or not Mrs. Smith cooperated in efforts of KOKS to cure blanketing interference was a matter of opinion, not fact. In this connection, Calvary believed that Smith was not cooperative because she refused to allow them to install a filter on her outside antenna stating first, that she was going to replace the antenna, and second, she did not want Calvary personnel on her roof. Also, Smith filed suit against Calvary seeking unspecified damages, and she was one of the prime movers in organizing a petition campaign against the station. Under these circumstances, it was not unreasonable for Calvary to reach the opinion that Smith was uncooperative. While this assessment may not have been accurate, nevertheless, the statement by Calvary that Smith was uncooperative was a statement of opinion, rather than fact, and not a sound or sufficient basis for concluding that Calvary lacked candor.

114. The Bureau further argues that Calvary falsely stated that Edward Hodgins' complaints were unresolved because a convenient time could not be arranged for an appointment. Hodgins, on the other hand, testified that the station made three appointments to address the blanketing interference, but it failed to keep the appointments. Significantly, this appears to be the only instance where KOKS failed to keep an appointment. Having regard for the fact that KOKS made countless appointments and home visits, it does not seem reasonable that with respect to Hodgins the station deliberately failed to keep appointments with him and, thereafter, knowingly misrepresented facts that a convenient time for an appointment could not be arranged.

115. The Bureau argues that the licensee submitted incomplete and misleading information to the Commission regarding the extent and success of its efforts to correct blanketing interference. This argument is apparently based on the fact that KOKS did not reveal in its reports to the Commission that it generally installed only one filter per household, did not correct interference to radios, and reported that interference was cured or resolved or reception improved when that was not the case. The licensee argues that it attempted to address radio interference when mentioned in telephone complaints or during a home visit and Mrs. Stewart, who performed the work in addressing blanketing complaints during home visits, did install more than one filter per household. Nevertheless, it appears that KOKS did not aggressively seek to determine during the home visits whether radio reception was affected by blanketing interference and, as a general matter, only one filter was installed on televisions in each home visited. While these matters, as previously noted, constitute violations of the blanketing rule, the failure of KOKS to report these matters to the Commission does not in the judgment of the Presiding Officer constitute the submission of incomplete information. KOKS reported the complainants visited and what was done in an effort to address the blanketing interference. When a blanketing complaint was reported as cured or resolved, or reception improved, Mrs. Stewart

[21] Earlier, in its February 24, 1989, letter to the Commission, Calvary reported that it cured Durbin's interference by the installation of a filter. In this regard, Mrs. Stewart acknowledged that she "just missed" Durbin's other complaints. In view of the volume of complaints received by KOKS, it is understandable that some complaints were missed by Mrs. Stewart.

believed that she was accurately reporting the results of her efforts. In so doing, she excluded Channel 6 because she believed KOKS had no responsibility to restore reception of Channel 6, a station that did not place a Grade B signal over Poplar Bluff. In any event, whether television reception was improved or blanketing interference was cured or resolved, in many instances constituted a matter of judgment based on subjective perceptions.[22] This is particularly true in this case because of the poor quality of the television signals to begin with.

116. To summarize, the licensee has violated the provisions of Section 73.318 of the Commission's rules, but has not deliberately or willfully misrepresented facts or lacked candor regarding the nature and extent of its efforts to correct the blanketing interference problems. While mistakes were made by KOKS in that some complaints were overlooked or the satisfaction of a complainant mistakenly reported, these errors appear more attributable to the volume of complaints resulting from the petition drive and the station's limited funds and staff resources, than the product of a deliberate intent to mislead and deceive the Commission. Thus, denial of renewal is not warranted.

117. Nevertheless, the repeated violations of Section 73.318 require the imposition of a forfeiture in the amount of $10,000.[23] Although the Commission's Policy Statement for *Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991) does not have a separate listing for blanketing violations, the Presiding Judge believes the $10,000 forfeiture imposed here is the amount of forfeiture liability listed for similar type violations.[24] Moreover, the licensee will be required to comply with the requirements of Section 73.318 of the rules and KOKS will be given another opportunity to remedy the remaining blanketing problems. In this connection, because KOKS believed it had no responsibility for Channel 6, no genuine effort was made to cure blanketing interference to that channel. The Commission, in the *Hearing Designation Order*, held that the blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations. Thus, KOKS is responsible for curing the blanketing interference to Channel 6 notwithstanding that the station does not place a Grade B signal over Poplar Bluff. In addition, KOKS must comply with the requirements of the *Order* released October 30, 1990, which is Mass Media Bureau Ex. 25. This includes satisfying all individuals KOKS inaccurately reported as having had their blanketing problems resolved.[25] The additional efforts to be undertaken by the licensee to eliminate blanketing interference to Channel 6, and the requirements set forth in the October 30, 1990, *Order*, shall include taking all reasonable and necessary steps, including the installation of antennas, coax cabling, rotors, boosters, and high quality filters, or any combination thereof, by a qualified repairman, at no cost to the home owner.[26] This work shall be accomplished by the licensee within 120 days to radios and television sets in each household that desires such work.[27] A complete report shall be submitted to the Mass Media Bureau within 20

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[22] The licensee's submissions to the Commission were quite voluminous and included the contemporaneous notes made during the home visits arranged to address the blanketing interference. Included with its February 12, 1991, and February 25, 1991, letters were the contemporaneous notes of the licensee made during the course of the home visits reporting the work done and the nature of the television reception. (MMB Ex. 26 and 27.) The complainants signed the contemporaneous notes.

[23] The other rule violations, as previously indicated, are not sufficient to establish that the licensee is inept and should be denied renewal of license on that score. Moreover, the individual alleged violations, other than the blanketing rule violations, do not warrant the imposition of a forfeiture. In this connection, while the licensee may not have accurately reported the results of its efforts to resolve blanketing complaints, its representations were not intentionally false in violation of Section 73.1015. Moreover, the alleged violation of Section 73.267 (determining operating power) was explained by the licensee and appears to be attributable to a defective diode which resulted in false readings. The Commission's engineer found the station's explanation to be satisfactory. While it appears that KOKS, on at least one occasion, may have operated in excess of authorized power when Mr. Meador viewed the transmitter in 1989, this was only an isolated instance. In this connection, the testimony of Meador was refuted by both Mr. and Mrs. Stewart. Mr. Stewart first denied being in the transmitter building with Meador, then appeared to admit it, and finally again denied the incident about which Meador testified. Quite frankly, the Presiding Judge found Mr. Stewart to be an unpersuasive witness. His testimony at times was incoherent; it was at times disjointed; and he had a tendency at times to inject irrelevant matter. The stroke he suffered several years ago and his resulting medical problems may account for some of his testimony. In any event, the alleged overpower operation does not, on the basis of the evidence presented, warrant the imposition of a forfeiture.

With respect to the alleged violation of Section 73.1213 (tower lighting and painting), the parties have stipulated that no violation was committed by the licensee and this provides no basis for the imposition of a forfeiture. Finally, the findings reflect substantial compliance with Section 73.3527 (public file requirements), the alleged deficiencies have been explained, but in any event are not of a willful or repeated nature warranting the assessment of a forfeiture.

[24] Because the violations continued for an extended period of time and caused harm to residents within the blanketing contour in that they were deprived of unhindered television and radio reception, the Presiding Judge would ordinarily increase the amount of the forfeiture in accordance with the Commission's Policy Statement. However, because it is anticipated and expected that the licensee will incur significant expense in addressing and remedying the remaining blanketing problems, the amount of forfeiture will not be increased.

[25] *See*, Footnote 5 of MMB Ex. 25. Also, KOKS shall reimburse home owners, such as Leatha Piper, for the expenses they incurred to eliminate blanketing interference which was caused by KOKS. In the case of Piper, she retained Lampe and spent more than $100 to restore her reception. As part of the report KOKS will be required to submit, it shall list the identity of each home owner who has been reimbursed and the amount of reimbursement.

[26] It is noted that the report prepared by Moffitt and Raines, KOKS Ex. 6, describes the system in use by Mr. and Mrs. Jim Farley, a retired television repairman, as "a model system for receiving weak signals in a high RF field." Perhaps KOKS may find it useful to copy this system in treating the blanketing interference problems. Also, Mr. Lampe, the station's engineer, recommended a very high gain antenna, coax cabling, rotor, and high quality filters to restore reception.

[27] Section 73.318 provides, *inter alia*, that a licensee has the obligation to satisfy blanketing complaints received by the station within one year after a station replaces its antenna. Because KOKS has applied to replace its 4-bay antenna with a 7-bay antenna, such change, when approved, would again commence KOKS' obligation to satisfy blanketing complaints.

days after the repairs have been completed setting forth in detail the nature of the work done, the equipment installed, and the results of the effort. This report shall be verified by the licensee and the repairman who performed the work. The home owner shall be requested to sign the report and acknowledge, in writing, whether they are satisfied and if not, why not.[28] In the meantime, the license for KOKS will be renewed for a period of only one year to provide KOKS with one last opportunity to comply with the Commission's blanketing rule.[29]

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the rules, the application of Calvary Educational Broadcasting Network, Inc. (File No. BRED-891103UA) for renewal of license of Station KOKS in Poplar Bluff, Missouri, IS GRANTED for a term of one year commencing from the date of release of this Initial Decision;

IT IS FURTHER ORDERED that the licensee of Station KOKS SHALL COMPLY with the provisions of Section 73.318 of the Commission's Rules, as set forth in paragraph 117, within 120 days;

IT IS FURTHER ORDERED that the licensee of Station KOKS SHALL SUBMIT the report required in paragraph 117 of this Decision within 20 days after the completion of the licensee's further efforts to eliminate the remaining blanketing interference;

IT IS FURTHER ORDERED that this Initial Decision SHALL CONSTITUTE an Order of Forfeiture in the amount of $10,000. Such payment SHALL BE SENT TO THE FOLLOWING ADDRESS:

FEDERAL COMMUNICATIONS COMMISSION
POST OFFICE BOX 73482
CHICAGO, ILLINOIS 60673-7482

This payment should identify the payor and reference the control number of the Notice of Apparent Liability (NAL) and the Notice of Forfeiture (NOF). In this instance, the NAL control number is FCC 92-238, and the control number of the NOF is FCC 93D-15. These references SHALL BE PLACED directly on the check. A separate piece of paper is not required.[30]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Stirmer
Chief Administrative Law Judge

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[28] If the home owner refuses to sign the report, the licensee shall report this together with a statement explaining why the home owner was not satisfied.

[29] In the event KOKS takes all the steps necessary to eliminate the blanketing interference as outlined above, including the installation of antennas, rotors, coax cabling, etc., and the home owner is still not satisfied because the signal strength of the television signals are too weak to permit good reception, then it would seem that the licensee has met its obligation under the blanketing rule. That rule requires the elimination of blanketing interference. It does not require KOKS to improve the signal strength of television or radio signals in Poplar Bluff.

[30] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CICI, INC.
GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED
MCI INTERNATIONAL, INC.
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP
TRT/FTC COMMUNICATIONS, INC.
WORLD COMMUNICATIONS, INC.

File No. SCL-93-004

Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the United Kingdom and France

CABLE LANDING LICENSE

Adopted: July 7, 1993; Released: July 16, 1993

By the Acting Chief, Common Carrier Bureau:

1. On December 10, 1992, seven United States International Service Carriers (hereinafter referred to as Joint Applicants)[1] filed the above-captioned Joint Application requesting authority pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39, to land and operate a high capacity digital submarine cable system known as TAT-12/TAT-13 Cable Network (TAT-12/TAT-13), extending from the United States mainland to the United Kingdom, then directly to France, and then directly back to the United States mainland. The application was placed on public notice on January 6, 1993. No comments were received.

The TAT-12/TAT-13 Cable Network

2. TAT-12/TAT-13, which consists of eight segments, will land at Green Hill, Rhode Island in the U.S. and extend to Lands End, United Kingdom and Penmarch, France, and return to land at Mastic Beach, New York. Segments A, B, C and D are, respectively, the cable station at Green Hill, Rhode Island; the cable station at Lands End, United Kingdom; the cable station at Penmarch, France; and the cable station in Mastic Beach, New York. Segment E is the submarine cable linking Segments A and B; Segment F is the submarine cable linking Segments B and C; Segment G is the submarine cable linking Segments C and D; and Segment H is the terrestrial cable linking Segments A and D.

3. TAT-12/TAT-13, comprised of 2 fiber pairs between each cable station, will employ AT&T's SL2000 technology, operating at 4.8 Gbits/s on each fiber pair. One fiber will be used for service while the other will be used for restoration. The "loop" configuration in conjunction with a fully redundant restoration pair provides 100% fiber-on-fiber restoration and route diversity within the network, resulting in high circuit reliability. The operating transmission capacity will be 60,000 64 kbps circuits per fiber or 300,000 virtual voice circuits when Digital Circuit Multiplication Equipment is employed. The TAT-12/TAT-13 terminal equipment will employ the STM-1 CCITT Synchronous Digital Hierarchy standard interface at 155 Mbps, which is the Basic System Module. 32 Basic System Modules will be used in each fiber pair of Segments E, F, and G; and in each fiber pair in Segment H.

4. The proposed TAT-12/TAT-13 will be owned by the Joint Applicants and a number of foreign telecommunications entities in the following foreign locations: Australia, Austria, Belgium, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Hungary, India, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Norway, Philippines, Poland, Portugal, Singapore, Slovakia, Spain, Sweden, Switzerland, Taiwan, Turkey, and the United Kingdom.

5. Pursuant to our obligations under 47 U.S.C. §§ 34-39, the Department of State has been notified and, after having coordinated with the National Telecommunications and Information Administration and the Defense Information System Agency, has approved the landing of TAT-12/TAT-13 in the United States.[2]

6. Based on the information provided by the Joint Applicants, we conclude that the grant of the requested authorization will not have a significant effect on the environment as defined in Section 1.1307 of the Commission's Rules and Regulations implementing the National Environmental policy Act of 1969, 42 U.S.C. §§ 4321-4335

[1] The Joint Applicants include American Telephone and Telegraph Company (AT&T), CICI, Inc. d/b/a IDB International (IDB International), GTE Hawaiian Telephone Company Incorporated (HTC), MCI International, Inc. (MCII), Sprint Communications Company Limited Partnership (Sprint), TRT/FTC Communications, Inc. (TRT/FTC), and World Communications, Inc. (Worldcom).

[2] Letter from Acting United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State to Acting Chief, Common Carrier Bureau, Federal Communications Commission, dated July 2, 1993. The letter notes that MCI has announced its intent to enter into a business arrangement with British Telecom International (BT) by which BT will acquire a 20 percent stake in MCI. The Department of State states that it "approves the grant of the requested licenses subject to modification, if necessary, based upon subsequently available information about this arrangement. The Executive Branch will review the filings regarding the BT/MCI arrangement and convey its views, as appropriate, to the Commission." *See* conditions (1) through (7) at paragraph 8 of this Cable Landing License.

(1976).[3] Consequently, no environmental assessment is required to be submitted with this Joint Application under Section 1.1311 of the Commission's Rules.

7. Concurrently with consideration of this application, this Commission has granted the Joint Applicants authority under Section 214 of the Communications Act of 1934, as amended, to construct and operate TAT-12/TAT-13 (DA 93-823, adopted July 7, 1993), File No. I-T-C-93-062). In conjunction with the authorization of the TAT-12/TAT-13 Section 214 application, we find that this application requesting a cable landing license should be granted.

ORDERING CLAUSES

8. Accordingly, this Commission HEREBY GRANTS AND ISSUES under the provisions of An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39, and pursuant to authority delegated to this Commission under Executive Order No. 10530, dated May 10, 1954, 3 C.F.R. 1954-1958, Comp., p. 189 (1961), *reprinted in* 3 U.S.C.A. § 301 at 1052 (1985), to the Joint Applicants (AT&T, IDB, GTE, HTC, MCII, Sprint, TRT/FTC, and Worldcom) a license to land and operate one high capacity digital submarine cable network, having a capacity of 4.8 Gbits/s on each of two fiber pairs, extending between Green Hill, Rhode Island, the United States, to Lands End, United Kingdom and then to Penmarch, France, and then to Mastic Beach, New York, United States. This license is subject to: (1) An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§34-39; (2) the Communications Act of 1934, as amended, 47 U.S.C. §§151-713; (3) subsequent applicable acts; (4) all relevant rules and regulations of the Federal Communications Commission; (5) any treaties or conventions relating to communications to which the United States of America is now may hereafter become a party; (6) any actions by the Commission or the Congress of the United States of America rescinding, changing, modifying, or amending any rights accruing to any person; and (7) the following conditions:

(1) The location of the cable within the territorial waters of the United States of America, its territories and possessions, and upon the foreshore thereof, shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensees at their expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

(2) The Licensees shall at all times comply with any requirements of United States Government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus with a view to protecting and safeguarding the cable from injury or destruction by enemies of the United States of America;

(3) The Licensees or any persons or companies directly or indirectly controlling them or controlled by them or under direct or indirect common control with any of them shall not acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to land, connect or operate cables or landlines, to construct or operate radio stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensees or any persons or companies controlling them or controlled by them are parties;

(4) Neither this license, nor the rights granted herein, shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensees to any persons, unless the Federal Communications Commission shall give prior consent in writing;

(5) This license is revocable after due notice and opportunity for hearing by the Federal Communications Commission in the event of breach or nonfulfillment of any requirement specified in Section 2 of An Act Relating to the Operation of Submarine Cables in the United States, 47 U.S.C. §§34-39, or for failure to comply with the terms of the authorization;

(6) The Licensees shall notify the Commission in writing of the date on which the cable is placed in service; and this license shall expire 25 years from that date, unless renewed or extended upon proper applications duly filed no less than six months prior to the expiration date; and, upon expiration of the license, all rights granted under it shall be terminated; and

(7) The terms and conditions upon which this license is given shall be accepted by the Licensees by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of this order.

9. This order is issued under Section 0.291 of the Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

[3] *See* Section 214 Application, File No. ITC-93-062, at p. 22.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
CICI, INC.
GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED
MCI INTERNATIONAL, INC.
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP
TRT/FTC COMMUNICATIONS, INC.
WORLD COMMUNICATIONS, INC.

File No. I-T-C-93-062

Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as amended, to Construct, Operate and Acquire Capacity in and Operate a High Capacity Digital Submarine Cable Network Between and Among the United States Mainland, the United Kingdom and France.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: July 7, 1993; **Released: July 16, 1993**

By the Acting Chief, Common Carrier Bureau:

1. The Commission has under consideration the above-captioned Joint Application[1] filed on January 8, 1993 by seven United States International Service Carriers (hereinafter referred to as Joint Applicants).[2] The Joint Applicants seek authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (1982), and Section 63.01 of the Commission's Rules and Regulations, 47 C.F.R. § 63.01, to construct and operate a high capacity digital submarine cable system, known as the TAT-12/TAT-13 Cable Network (TAT-12/TAT-13), extending from the United States mainland to the United Kingdom, then directly to France, and then directly back to the United States mainland. TAT-12/TAT-13 will be jointly owned by the Joint Applicants and by foreign telecommunications entities in the following countries: Australia, Austria, Belgium, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Norway, Philippines, Poland, Portugal, Singapore, Slovakia, Spain, Sweden, Switzerland, Taiwan, Turkey, and the United Kingdom. The Joint Applicants propose that TAT-12/TAT-13 will be operational on August 31, 1996.

2. The Joint Applicants also seek authority to (a) acquire capacity in TAT-12/TAT-13; (b) acquire, by lease, such extension facilities as may be required to extend capacity in TAT-12/TAT-13; (c) activate and operate capacity in TAT-12/TAT-13 and in the extension facilities for the provision of their respectively authorized telecommunications services; (d) convey to their correspondents or to non-owners, half-interests, on an indefeasible right of user (IRU) basis, in certain capacity currently wholly assigned to a Joint Applicant, as necessary for such IRU recipients to provide their authorized services over TAT-12/TAT-13; and (e) multiply through the use of Digital Circuit Multiplication Equipment (DCME) the bearer channels acquired herein, thereby deriving up to the maximum attainable channels (to the extent such authorization is required for an individual Applicant).

3. The Joint Application was placed on public notice on January 6, 1993. No comments were received.

I. THE APPLICATION

4. The Joint Applicants will use TAT-12/TAT-13 to supplement their existing facilities in providing the services which each is currently furnishing or which each may subsequently furnish.[3] TAT-12/TAT-13 will extend in a loop configuration from a landing point at the cable station at Green Hill, Rhode Island, to the cable station at Lands End, United Kingdom, to the cable station at Penmarch, France, to the cable station at Mastic Beach, New York, returning to the cable station at Green Hill, Rhode Island via a terrestrial tie cable. TAT-12/TAT-13 will be connected in the United States mainland with U.S. domestic networks. In addition, it will be extended by suitable facilities to the terminals of other international communications systems, including other cable terminals and satellite earth stations. This will enable TAT-12/TAT-13 to be used for services between and among the U.S. mainland, the United Kingdom, France, and points beyond.

5. The existing international facilities used by the Joint Applicants for services between the United States and those locations proposed to be served by the proposed capacity of TAT-12/TAT-13 consist of satellite and submarine cable circuits. The satellite circuits between the U.S. earth stations and the INTELSAT Atlantic Ocean Region (AOR) satellite are acquired by the Joint Applicants from the Communications Satellite Corporation (Comsat) pursuant

[1] The Joint Applicants supplemented their Section 214 Application by filing individual circuit activation figures under separate cover and under a request for confidentiality pursuant to Sections 0.457 and 0.459 of the Commission's Rules. They also filed additional data to show demand for all current digital submarine cables serving the same points.

[2] The Joint Applicants include American Telephone and Telegraph Company (AT&T), CICI, Inc. d/b/a IDB International (IDB International), GTE Hawaiian Telephone Company Incorporated (HTC), MCI International, Inc. (MCII), Sprint Communications Company Limited Partnership (Sprint), TRT/FTC Communications, Inc. (TRT/FTC), and World Communications, Inc. (Worldcom).

[3] Initially, Joint Applicants may not be certified to serve directly all countries or territories which the facilities covered by the Application are capable of serving. Each individual applicant proposing an extension into such countries/territories by means of the TAT-12/TAT-13 facilities will be required to seek the appropriate authority as may be required at the time.

to Comsat's applicable tariffs and are used in conjunction with connecting circuits between the AOR satellites and foreign earth stations provided by the Joint Applicants' foreign correspondents. The AOR satellites and transatlantic submarine cable facilities used to provide these services are listed in the Application at p. 7.

6. The Construction and Maintenance Agreement (C&MA),[4] initialed on April 30, 1992, defines the proposed cable network in terms of Segments for ownership purposes. TAT-12/TAT-13 will consist of eight such Segments. Segments A, B, C and D are, respectively, the cable station at Green Hill, Rhode Island; the cable station at Lands End, United Kingdom; the cable station at Penmarch, France; and the cable station in Mastic Beach, New York. Segment E is the submarine cable linking Segments A and B; Segment F is the submarine cable linking Segments B and C; Segment G is the submarine cable linking Segments C and D; and Segment H is the terrestrial cable linking Segments A and D.

7. TAT-12/TAT-13, comprised of 2 fiber pairs between each cable station, will employ AT&T's SL2000 technology, operating at 4.8 Gbps on each fiber pair. One fiber will be used for service while the other will be used for restoration. The "loop" configuration in conjunction with a fully redundant restoration pair provides 100% fiber-on-fiber restoration and route diversity within the network, resulting in high circuit reliability. The operating transmission capacity will be 60,000 64 kbps circuits per fiber or 300,000 virtual voice circuits when Digital Circuit Multiplication Equipment is employed. The SL2000 system uses optically amplified bit-rate insensitive repeaters, bit-rate sensitive repeaters, bit-rate sensitive terminal equipment, and dispersion-shifted fiber. This fiber differs from single mode fiber in that the optical characteristics of the fiber are modified so the minimal pulse spreading or dispersion occurs in the 1550 nm wavelength region rather than in the 1300 nm region. This reduces loss in the cable. The bit-rate insensitive repeaters have fewer active components and are based on Erbium Doped Fiber Amplifiers, which also use fewer components and therefore reduce the likelihood of malfunction. The TAT-12/TAT-13 terminal equipment will employ the STM-1 CCITT Synchronous Digital Hierarchy standard interface at 155 Mbits/s, which is the Basic System Module. Thirty-Two Basic System Modules will be used in each fiber pair of Segments E, F, and G; and in each fiber pair in Segment H.

8. The estimated total cost of TAT-12/TAT-13 will be based on a two-pair fiber loop system is $756 million. The Joint Applicants' share of costs is $345.2 million, or about 45.66 percent of the total project costs based on investment shares. The estimated cost does not include interest during construction, estimated at $133 million, or costs of DCME, which will be added later to accommodate future demand. About 80 percent of the costs of Segments E, F, G, and H will be on a fixed price basis, with the remaining 20 percent on a cost-incurred basis. Items such as the submarine cable, repeaters, terminal transmission equipment and high voltage power plant will be furnished on a fixed price basis. Items such as the cable laying, route survey, plowing and burial of cable, project management, owners' inspection and amounts payable for customs duties and value added taxes will be handled on a cost-incurred basis. Under the terms of the C&MA, the co-owners will bear the capital and operational and maintenance costs of TAT-12/TAT-13 in accordance with Schedule B of Attachment B to the Joint Application. *See* Appendix A hereto.

9. The capacity assignments in TAT-12/TAT-13 are based on the forecasted demand of each of the Joint Applicants through the year 2010. Capacity assignments to the parties are indicated in Schedules C-1 through C-5 of Attachment B to the Joint Application. *See* Appendix B hereto. The C&MA provides for the admission of other carriers as owners, up to the Ready for Provisional Acceptance (RFPA) date which is planned to be August 31, 1996. Also, both prior and subsequent to the RFPA date, carriers may acquire TAT-12/TAT-13 capacity by IRU, lease or other mutually agreed upon arrangements. As of the date of initialing the C&MA, interests in the 4,032 MIUs[5] of the Design Capacity of TAT-12/TAT-13 have been assigned to existing TAT-12/TAT-13 owners and that is referred to as Notional Capacity. The remaining capacity is referred to as the Unassigned Capacity. The Unassigned Capacity is held collectively by the Co-owners in common and undivided shares in the same proportions as their percentage ownership interest as shown in Schedule B of Attachment B of the Joint Application. *See* Appendix B hereto. TAT-12/TAT-13 Notional Capacity may be increased at the request of any Co-owner. *See* Joint Application, Attachment B, para. 13(a).

10. The Joint Applicants state that their proposed construction of TAT-12/TAT-13 will serve the public interest by meeting the telecommunications needs of the Joint Applicants and their correspondents in the Atlantic Ocean Region (AOR) during the period 1996-2010. With transatlantic capacity of 4,032 MIUs for each cable segment, the equivalent of over 600,000 virtual voice circuits, TAT-12/TAT-13 is described as a significant part of the common carrier network designed to meet specific service requirements for additional digital cable facilities in the AOR. Moreover, the Joint Applicants note that TAT-12/TAT-13 will provide additional digital connectivity to the existing and planned TAT-8, TAT-9, TAT-10, TAT-11, TCS-1, and PTAT-1 Cable Systems. The Joint Applicants claim that the TAT-12/TAT-13 introduces a new level of restoration capability to submarine cable facilities as a result of its unique loop configuration and completely redundant restoration fiber pair. This will provide 100% fiber-on-fiber restoration and route diversity within the network, which will result in a much higher circuit reliability. They assert that both inter-AOR cable system restoration capability, through diversity, and increased customer satisfaction for digital submarine cable backup for private networks will be provided by TAT-12/TAT-13.

11. The Joint Applicants claim, the loop configuration design of TAT-12/TAT-13, its lightwave amplification technology and the fact that the operation and maintenance of

[4] *See* Attachment B to the Joint Application.

[5] An MIU is the minimum unit of investment for ownership in the TAT-12/TAT-13 network, allowing the use of 2.048 Mbit/s and the additional 420,571.43 bits per second required for multiplexing in each direction. The term MIU is increasingly used in high capacity cable applications. As background, we note that an MAUO (minimum assignable unit of ownership) is an equivalent voice channel (circuit) operating at 64,000 bits per second with an additional 9,684,656 bits per second required for multiplexing for a total of 73,684,656 bits per second in each direction at the System Interface locations. Thirty (30) MAUOs are the equivalent of 1 MIU.

the network will be under the direct control of the common carriers using it to carry their own telecommunications traffic, will enhance overall reliability. They note that TAT-12/TAT-13 will have state-of-the-art performance that will prevent it from losing any call in progress in the event of either a cable cut on a segment or failure of the fiber. Moreover, they assert that TAT-12/TAT-13 will satisfy the operational requirements of the Department of Defense (DOD) in the AOR, because it enhances both path and media diversity and because it responds to DOD's statement that "reliance on satellite services for certain requirements is not possible due to technical limitations." *North Atlantic Telecommunications Needs, 1991-2000*, CC Docket No. 79-184, Comments of DOD, p. 11 (Feb. 16, 1988). The Joint Applicants also assert that TAT-12/TAT-13 will promote international comity because it is already 50 percent subscribed and over 45 carriers and telecommunications administrations, including those representing 34 different countries, are participating as owners.

12. The Joint Applicants note that TAT-12/TAT-13 will provide significant economies, with an estimated original capital cost of a 64 kbps half-channel (half MAUO) of $6,300 for a US-UK or US-France circuit.[6] The circuit unit costs for a virtual voice channel in TAT-12/TAT-13 will be further reduced through the addition and use of digital circuit multiplication technology, which can derive nominally 150 virtual voice channels from a MIU (30 MAUOs). Joint Applicants add that any inefficient investment decisions (*e.g.*, constructing facilities that are not required) would be solely at the expense of a carrier's shareholders. They point out that the Commission, in the TPC-4 Order,[7] indicated that competitive conditions, the elimination of circuit loading guidelines, and the implementation of price cap regulation of AT&T[8] have made it appropriate to give U.S. International carriers wider latitude in determining what facilities to construct and when to place such facilities in service. These factors, they assert, will serve to protect the public interest.

II. DISCUSSION

13. The Joint Applicants seek authority to construct and operate the digital TAT-12/TAT-13 network by no later than June 1993 to permit the manufacture of various components to allow for the installation, laying, and testing necessary to permit complete activation of TAT-12/TAT-13 by August 31, 1996. We have reviewed the Joint Application under the public convenience and necessity standard of Section 214 of the Communications Act of 1934, as amended, and conclude that implementation of TAT-12/TAT-13 in 1993 will serve the public interest. Accordingly, we grant the Joint Application subject to certain conditions.[9]

A. The Need for the TAT-12/TAT-13 Cable Network

14. Section 214 of the Communications Act requires that the Commission make a finding that the public convenience and necessity will be served by authorization of the facilities requested. The standard we employ is "whether the specific facility chosen and the use to be made of that facility are required by the public convenience and necessity."[10] In making this determination, we traditionally have considered such factors as demand, cost, media and route diversity, restoration, intramodal and intermodal competition, technological innovations and international comity.[11]

1. Demand and Capacity

15. Under the traditional form of demand analysis that we have applied in authorizing the construction and operation of submarine cable systems, we conclude that projected circuit demand, along with other factors, supports the commencement of operation of TAT-12/TAT-13 to meet the telecommunications needs of the Joint Applicants and their correspondents in the AOR through year 2010. The Commission has recognized that user demand is determined not only by the need for raw transmission capacity, but also by such user requirements as digital technology, route and media diversity, digital cable restoration capability, security and cost-effectiveness.

16. The Joint Applicants have provided their circuit demand forecasts for TAT-12/TAT-13,[12] which is scheduled to be placed in operation in late 1996. The Joint Applicants anticipate that TAT-12/TAT-13 will be 33% and 54% filled in 1997 and 2000, respectively.[13] Meanwhile, existing cables in the AOR will continue to be filled. The total number of circuits, normalized for comparison to equivalent 64 kbps circuits, forecast to be activated on TAT-8, TAT-9, TAT-10 and TAT-11 in 1997, according to the Joint Applicants, will be 29,696, which represents 74% of the capacity of those cables owned by the Joint Applicants. By year 2000, 32,964 circuits will be activated, or 83% of total capacity.[14] In 1997, the total demand on all AOR cables used by the Joint Applicants, including TAT-12/TAT-13, will be 44,539 circuits, more than the total available capacity of TAT-8, TAT-9, TAT-10 and TAT-11, *viz.*, 39,910 circuits in that year. In the year 2000, some 56,774 circuits will be needed. The overall fill rate for the existing cables by all carriers from 1997 onward supports the need for the additional capacity to be provided by

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[6] The cost per half-MAUO will further decrease, Joint Applicants say, as the Unassigned Capacity is utilized by increasing the Notional Capacity. When the Notional Capacity reaches Design Capacity, the cost per half-MAUO will be approximately $3,100. *See* Joint Application at p. 19, n.5.

[7] American Telephone and Telegraph Company et al., 4 FCC Rcd 8042 (1989).

[8] Price Cap Decision, 4 FCC Rcd 2873 (1989).

[9] In a separate decision, we also grant the Joint Applicants' request for a cable landing license pursuant to the Cable Landing License Act. *See* File No. S-C-L-93-004 (DA 93-822, adopted July 7, 1993).

[10] AT&T et al., (TAT-7 Order), 73 F.C.C. 2d 248, 256 (1979).

[11] *See, e.g.*, AT&T et al. (TAT-9 Order), 4 FCC Rcd 1129, 1131 (Com. Car. Bur. 1988). *See also* Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs during the Period 1981-1985 (POR Planning), 102 F.C.C. 2d 353, 355 (1985).

[12] *See* n.1, *supra*.

[13] These figures represent the Joint Applicants' aggregated circuit fill rate (ACFR), based on total available Joint Applicant-owned circuits and fill forecasts. The ACFR will be 65% in 2002. The arithmetic averages of the Joint Applicants' individual fill rate forecasts are 74% and 83% for 1997 and 2000, respectively.

[14] Several of the Joint Applicants will have exhausted capacity available to them on existing cables by 1997.

proposed TAT-12/TAT-13, especially when viewed with the advantages of media and route diversity, restoration capability, and technological innovations discussed below.

17. We recognize that there are uncertainties inherent in long-range traffic projections, but new technology that increases capacity, reliability and quality is likely to spur demand for new digitized services and could very well stimulate circuit demand beyond the forecasts provided by the Joint Applicants. The cost efficiencies of the proposed TAT-12/TAT-13 cable, with its routing diversity and restoration capability, discussed below, may further stimulate demand. In view of the foregoing, we conclude that the proposed construction TAT-12/TAT-13 for operation in 1996 is justified based on demand.

2. Quality of Service

18. *Media and route Diversity.* We previously have found that increasing media and route diversity to strengthen service reliability is of decisional significance in our public interest determination to authorize the construction of transoceanic facilities.[15] Media diversity enhances service reliability through the use of more than one transmission medium, satellite or cable, to carry a correspondent's traffic. As a result, an increase in media diversity protects against the systemic failure of one medium, route, or path. Diversity enhances service reliability by increasing the number of independent routes that carry traffic to a given location. It is closely related to the ability to restore circuits in case of a facility failure. As a rule, the more independent routes serving a given location, the greater the ability to restore one that fails. Thus, an increase in route or path diversity is the natural consequence of the introduction of another facility into a region.

19. We conclude that the introduction of TAT-12/TAT-13 as proposed will enhance route diversity by adding another independent cable route. Service reliability would be improved because the channel capacity affected by a service interruption on a particular route or routes would be further minimized, and the ability to restore service via another digital cable facility would be enhanced. Moreover, the loop feature of the TAT-12/TAT-13 network, coupled with its spare optic fiber pair, will ensure nearly instant restoration, as discussed below, as well as effective diversity both within the network itself and between submarine cables.

20. *Restoration.* Restoration pertains to the ability to maintain service in the event of a facility outage. TAT-12/TAT-13 will provide restoration capability for AOR facilities in general, both by its loop design, which permits essentially uninterrupted service even if the cable is severed at one location, and by the availability of other submarine cables, such as TAT-11, TAT-9 and TAT-8. The Commission has previously recognized that, although satellite capacity provides a satisfactory restoration alternative for cable, absolute reliance on satellite facilities to meet restoration needs and increased demand may not be in the best interests of users that may have specific communications requirements that may be best accommodated by fiber optic cable facilities.[16]

21. The introduction of TAT-12/TAT-13 in 1996 to accommodate demand for digital cable facilities would provide an additional restoration alternative in the AOR. As a result, there will be digital cable facilities available in the event any other cables are disrupted by an outage. Moreover, the introduction in TAT-12/TAT-13 of very high capacity transmission capacities, in the order of 4.8 Gbps, coupled with loop configuration design, lightwave amplification technology, and direct control of the common carriers using the cable for their own traffic, make this network highly resistant to disruption by outage and uniquely restorable in the event of an outage. We conclude that the design of TAT-12/TAT-13 will enhance service reliability of existing cables and provide an improvement of overall AOR telecommunications reliability.

3. Cost Analysis

22. The Joint Application estimates the total cost of TAT-12/TAT-13 to be $756 million, with the Joint Applicants' share projected to be $345.2 million, representing about 45.66 percent of the total project cost based on investment shares in the network. This represents an overall cost of $187,500 per MIU, based on a transatlantic capacity of 4,032 MIUs for each cable segment. The Joint Applicants' estimated original capital cost of a 64 kbps half-circuit (half-MAUO) is approximately $6,300. This figure, they claim, will further decrease as the unassigned capacity is utilized by increasing the Notional Capacity,[17] at which time the cost per half-MAUO will be approximately $3,100. A comparison of the costs for previously authorized digital cable facilities in the AOR demonstrates that TAT-12/TAT-13 will continue the trend of providing increased capacity while reducing circuit costs. For example, the cost of a TAT-11 half-MAUO between the U.S. and U.K. is $9,600. The cost of a TAT-8 half-MAUO is $22,200. The cost of a similar unit of capacity on TAT-9 varied between $10,000 and $14,000 per half-MAUO.

4. Technological Innovations

23. In determining the need for additional facilities in a region, the Commission normally considers the extent to which the proposed facilities will introduce new technology. In the past, for example, the introduction of digital fiber optic technology was compelling, whereas straightforward improvements in readily available laser technology would not of itself necessarily constitute technological innovation. While digital technology is already available in cables in the AOR, the innovations represented by TAT-12/TAT-13 are significant in several respects. The incorporation of a loop configuration will permit an increase in network reliability because even if the cable is disrupted the alternative route around the loop will permit continuity of connectivity. The operating transmission capacity of 60,000 64 kbps circuits per fiber or 300,000 virtual voice circuits when Digital Circuit Multiplication Equipment is employed also provides a marked increase in overall capacity, compared with the TAT-11 capacity of 252

[15] *See* North Atlantic Facilities Planning, 3 FCC Rcd 3979, 3986 (1988); All American Cable and Radio Inc., et. al., 67 F.C.C. 2d 451, 469 (1978).

[16] North Atlantic Facilities Planning, 3 FCC Rcd at 3987.

[17] Notional capacity is the cable network capacity which is intended to satisfy requirements through the year 2006. *See* Schedules C-1 through C-5 of the Joint Application.

MIUs per fiber.[18] The use of bit-rate insensitive repeaters having a minimum of active components and using Erbium Doped Fiber Amplifiers for optical amplification reduces the likelihood and number of component malfunctions, increasing the overall reliability of the SL2000 network. The SL2000 system utilizes Dispersion Sifted Fiber which mitigates the effects of fiber dispersion and allows operation for up to 9,000 kilometers. The combination of these features and improvements provides much higher capacity and lower circuit cost.

5. Competition Considerations

24. We have previously recognized that the enhancement of both intermodal and intramodal competition can be expected to spur providers of both international satellite and cable facilities to keep their services innovative and their prices low.[19] We find that introduction of TAT-12/TAT-13 will enhance intramodal competition in the AOR and encourage both private and common carrier cable operators to innovate and price their offerings in a manner that is calculated to attract and retain customers. We also find that introduction of TAT-12/TAT-13 will increase intermodal competition with INTELSAT and potential separate satellite system providers and thereby spur existing providers to both cable and satellite capacity to respond competitively. Such competition will give service providers and other users greater choice in selecting facilities and thus will enable them to maintain, or improve and enhance, the economy and efficiency of their operations. The opportunity to choose among a range of facilities further allows service providers to be more responsive to customer needs in terms of price, service quality, and service availability.

6. International Comity

25. Our decisions authorizing the construction and operation of transoceanic submarine cable systems historically have recognized that correspondent acceptance is an important public interest factor.[20] Forty-five foreign carriers and telecommunications administrations from thirty-four countries have agreed that the TAT-12/TAT-13 network design and 1996 service date will meet the projected service needs of their customers. Thus, we conclude that TAT-12/TAT-13 will promote international comity.

B. The Effect of Price Cap Regulation

26. Having determined that there is a need for the introduction of the TAT-12/TAT-13 cable network in 1996, we also note that current competitive conditions and regulatory approaches provide the Joint Applicants with the incentive to make rational economic decisions and not engage in unnecessary construction of facilities.[21] In our TPC-4 Decision, we stated that the price caps system of regulation is a disincentive for carriers to engage in the construction of unnecessary facilities because the burden of such investment would fall on stockholders and not ratepayers.[22] Thus, the Joint Applicants' decision on what facilities to construct and when to place them in service should also be based on these factors.[23]

III. CONCLUSION AND ORDERING CLAUSES

27. In view of the foregoing, we find that the present and future public convenience and necessity require the construction of the TAT-12/TAT-13 Cable Network, having an operational capacity of 4.8 Gbps (plus similar restoration pair capacity), to become operational in 1996.

28. Based on the information provided by the Joint Applicants, we conclude that the grant of the requested authorization will not have a significant effect on the environment as defined in Section 1.1307 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. §§4321-4335 (1976).[24] Consequently, no environmental assessment is required to be submitted with this Joint Application under Section 1.1311 of the Commission's Rules.

29. Accordingly, IT IS ORDERED That, pursuant to Section 214, 47 U.S.C. §214 (1982), the application, File No. I-T-C-93-062, of the Joint Applicants (AT&T, CICI d/b/a IDB, HTC, MCII, Sprint, TRT/FTC, Worldcom) IS GRANTED, subject to the following terms, conditions, and limitations, and the Joint Applicants are authorized to:

(a) construct and operate the TAT-12/TAT-13 Cable Network as proposed herein;

(b) acquire and activate capacity in the TAT-12/TAT-13 Cable Network, on an ownership basis, in accordance with the interests specified in Appendix B;

(c) acquire capacity, by lease, in such connecting facilities as may be required to extend capacity in the TAT-12/TAT-13 Cable Network to certified points;

(d) utilize digital circuit multiplication equipment (DCME) to derive additional voice paths from the circuits (MIUs) authorized herein in accordance with appropriate Commission authorizations; and

(e) activate and operate capacity in TAT-12/TAT-13 and aforementioned extension facilities for the provision of the Joint Applicants' authorized telecommunications services to certified points.

30. IT IS FURTHER ORDERED, that Joint Applicants are authorized to acquire, by lease, appropriate connecting facilities between the Green Hill, Rhode Island and Mastic Beach, New York cable stations and their respective operating offices in the United States.

31. IT IS FURTHER ORDERED, that the Joint Applicants' tariffs must state that its customers may not resell international private lines or connect them to the public switched network for the provision of international switched services, unless authorized to do so by the Commission upon a country-specific finding of resale opportu-

[18] For voice services, digital circuit multiplication systems can be employed to derive approximately 150 virtual voice paths from each MIU, or 37,800 circuits.

[19] North Atlantic Facilities Planning, *supra*, at 3989; *see also* American Telephone and Telegraph Company, 7 FCC Rcd 136 (1992) [TAT-11].

[20] *Id.* at 3989.

[21] *See* Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 4 FCC Rcd 2873 (1989)(Price Caps Order).

[22] *See* American Telephone and Telegraph, et. al., 4 FCC Rcd 8042, 8045 (1989) (TPC-4 Decision).

[23] *Id.* at 8046.

[24] *See* Joint Application at p. 22.

nities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, 7 FCC Rcd 559 (1991), *recon. granted in part*, 7 FCC Rcd 7427 (1992), *recon. pending*.

32. IT IS FURTHER ORDERED, that the Joint Applicants shall make available half-interests in the TAT-12/TAT-13 capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.

33. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to reallocate U.S. carriers' interests and capacity herein authorized, as the public interest may require to accommodate additional carriers or otherwise, with, where required, the concurrence of the foreign administration or carriers concerned, and further, jurisdiction is retained by the Commission over all matters relating to the Joint Applicants' ownership, management, maintenance, and operation of the cable network as authorized herein, to ensure the most efficient use, of both this cable network and all means of communications between the United States and the Atlantic Ocean Region.

34. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to review the DCME, multiplexing and interworking arrangements and attribution of the costs thereof and to require such changes in the provision of these services and equipment as may be necessary.

35. IT IS FURTHER ORDERED, that no Joint Applicant herein that is deemed a dominant carrier pursuant to the Commission's decision in CC Docket No. 85-107[25] or CC Docket No. 91-360[26] shall either dispose of any ownership interest in TAT-12/TAT-13 capacity it is authorized to acquire to any entity on an ownership basis or dispose of any interest in any such capacity in any way to a non-U.S. telecommunications service provider without prior authorization by the Commission.

36. IT IS FURTHER ORDERED, that the Joint Applicants shall include TAT-12/TAT-13 facility use in the monthly Status Reports filed pursuant to the Commission's Orders. These reports shall be filed no later than the 20th day of each month providing the information for the preceding month.

37. This order is issued under Section 214 of the Communications Act, 47 U.S.C. § 214, and Section 0.291 of the Rules, 47 C.F.R. § 0.291, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

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[25] *See International Competitive Carrier*, 102 F.C.C. 2d 812, 822 (1985).
[26] *See International Services Order*, 7 FCC Rcd 7331 (1992).

APPENDIX A

VOTING INTERESTS IN THE TAT-12/TAT-13 CABLE NETWORK

OWNERSHIP INTEREST IN SEGMENTS E, F & G

ALLOCATION OF CAPITAL, OPERATING AND MAINTENANCE COSTS IN SEGMENTS A,B,C,D,E,F,G & H

APTT	0.32812
BELGACOM	1.46391
BT	20.24230
BTE	1.36295
CYTA	0.15144
DBP-T	7.47097
FT	5.37607
HT	0.10096
ITC	0.37860
LPT	0.07572
MARCONI	0.07572
MCL	5.22463
NPTT	1.23675
NT	0.30288
OTE	0.12620
SFPT	0.20192
SPT-BA	0.02524
SPT-PHA	0.15144
SPTT	1.41343
ST	1.06007
TD	0.22716
TELE2	0.10096
TLFN	0.90863
TPSA	0.47956
TPTT	0.25240
VSNL	0.42908
AT&T	29.15194
DACOM	0.07572
DGT	0.02524
HKTI	0.17668
HTC	0.02524
IDB	0.20192
IDC	0.75719
ITDC	0.20192
ITJ	0.37860
KDD	2.32206
KT	0.27764
MCII	12.69561
OPTUS	0.07572
OTC	0.42908
PLDT	0.12620
SINGTEL	0.07572
SPRINT	2.62494
TELMEX	0.10096
TLGB	0.15144
TRT/FTC	0.45432
WCOM	0.50480
TOTAL	100.00000

APPENDIX B

TAT-12/TAT-13 CABLE NETWORK
MIUS ASSIGNED BETWEEN THE SYSTEM INTERFACES LOCATED AT

LONG ISLAND AND PENMARCH

EASTERN ACCESS PARTIES	WESTERN ACCESS PARTIES																
	AT&T	DACOM	FT	HKTI	IDC	ITDC	ITJ	KDD	KT	MCII	OTC	PLDT	TELMEX	TLGB	TRT/FTC	WCOM	TOTAL
APTT	4	0	0	0	0	0	0	1	1	1	0	0	0	0	0	0	7
AT&T	34	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	34
BELGACOM	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
CYTA	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	3
DBP-T	30	0	0	1	0	0	0	5	0	23	0	0	0	0	0	0	59
FT	42	2	4	1	1	1	1	8	2	21	1	1	1	0	4	0	88
HT	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
ITC	4	0	0	1	0	0	0	1	0	2	0	1	0	0	0	0	8
KDD	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MARCONI	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	2
MCII	8	0	0	0	0	0	0	0	0	16	0	0	0	0	0	0	16
OTE	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
SPTT	13	0	0	1	2	0	1	2	0	8	1	0	1	0	0	1	30
TLGB	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
TPTT	2	0	0	0	0	0	0	0	0	2	0	0	0	1	0	0	5
VSNL	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
WCOM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
TOTALS	135	2	4	4	4	1	2	18	3	77	2	2	2	3	4	2	265

APPENDIX B

TAT-12/TAT-13 CABLE NETWORK
MIUS ASSIGNED BETWEEN THE SYSTEM INTERFACES LOCATED AT

GREENHILL AND PENMARCH

EASTERN ACCESS PARTIES	WESTERN ACCESS PARTIES														
	AT&T	FT	IDB	IDC	ITDC	ITJ	KDD	MCI	OTC	SINGTEL	SPRINT	TELMEX	TLGB	WCOM	TOTAL
AT&T	14	0	0	0	0	0	0	0	0	0	0	0	0	0	14
BELGACOM	0	0	0	0	0	0	1	0	0	0	2	0	0	0	3
CYTA	1	0	0	0	0	0	0	1	0	0	1	0	0	0	3
DBP - T	30	0	0	2	0	0	4	23	0	0	0	0	0	0	59
FT	42	16	1	2	1	2	8	21	1	1	7	1	0	0	103
ITC	4	0	0	0	0	0	1	2	0	0	1	0	0	0	8
LPT	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
MARCONI	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
MCI	0	0	0	0	0	0	0	16	0	0	0	0	0	0	16
OTE	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3
SPRINT	0	0	0	0	0	0	0	0	0	0	9	0	0	0	9
SPT-BA	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
SPTT	13	0	0	0	0	0	2	8	0	0	2	0	0	1	26
TPTT	2	0	0	0	0	0	0	2	0	0	1	0	0	0	5
VSNL	6	0	0	0	0	0	0	1	0	0	4	0	2	0	13
WCOM	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
TOTALS	117	16	1	4	1	2	16	75	1	1	27	1	2	2	266

APPENDIX B

TAT-12/TAT-13 CABLE NETWORK
MIUS ASSIGNED BETWEEN THE SYSTEM INTERFACES LOCATED AT

LONG ISLAND AND LANDS END

EASTERN ACCESS PARTIES	WESTERN ACCESS PARTIES												
	AT&T	HKTI	IDB	IDC	ITJ	KDD	KT	MCII	OTC	SINGTEL	TRT/FTC	WCOM	TOTAL
AT&T	13	0	0	0	0	0	0	0	0	0	0	0	13
BELGACOM	10	0	0	0	0	1	1	10	0	0	0	0	22
BT	105	3	0	0	1	12	0	63	3	0	7	0	194
BTE	16	0	0	0	0	0	0	8	0	0	1	0	25
DBP-T	35	0	0	0	0	4	0	23	2	0	5	1	70
LPT	1	0	0	0	0	0	0	0	0	0	0	0	1
MCII	0	0	0	0	0	0	0	1	0	0	0	0	1
MCL	49	1	3	3	1	6	1	32	1	0	0	1	98
NPTT	13	1	0	0	0	1	0	6	0	1	0	0	22
NT	3	0	0	0	0	0	0	3	0	0	0	0	6
SFPT	2	0	0	0	0	0	0	0	0	0	0	0	2
SPT-PHA	2	0	0	0	0	0	0	0	0	0	0	0	2
ST	14	0	0	0	0	0	0	5	0	0	1	0	20
TD	1	0	0	0	0	0	0	0	0	0	0	0	1
TELE2	2	0	0	0	0	0	0	0	0	0	0	0	2
TLFN	11	0	0	0	0	0	0	4	0	0	0	0	15
TPSA	7	0	0	0	0	0	0	0	0	0	0	0	7
VSNL	2	0	0	0	0	0	0	0	0	0	0	0	2
WCOM	0	0	0	0	0	0	0	0	0	0	0	2	2
TOTAL	286	5	1	3	2	24	2	155	6	1	14	4	505

APPENDIX B

TAT - 12/TAT - 13 CABLE NETWORK
MIUS ASSIGNED BETWEEN THE SYSTEM INTERFACES LOCATED AT

GREENHILL AND LANDS END

EASTERN ACCESS PARTIES	WESTERN ACCESS PARTIES																						TOTAL
	AT&T	BT	DACOM	DOT	DSP-T	HTC	IDB	IDC	IFDC	IJ	KDD	KT	MCI	OPTUS	OTC	PLDT	SINGTEL	SPRINT	TELMEX	WCOM	
APTT	3	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	1	0	0	6
AT&T	138	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	138
BELGACOM	11	0	0	0	0	0	0	1	1	1	2	0	11	0	0	1	0	2	0	1	30
BT	165	150	0	1	0	0	2	3	1	2	13	1	63	3	4	0	0	11	1	0	416
BTE	17	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	2	0	0	20
DSP-T	35	0	0	0	1	1	0	13	2	4	5	4	23	0	2	1	0	10	0	1	102
HT	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
LPT	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2
MCB	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
MCL	48	0	1	0	0	0	2	0	1	0	5	1	31	0	1	1	0	10	0	1	102
NPTT	14	0	0	0	0	0	0	1	0	1	1	0	0	0	0	0	0	4	0	0	22
NT	3	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2	0	0	6
SFPT	3	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	1	0	0	6
SPRINT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	4
SPT-PHA	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	0	6
ST	14	0	0	0	0	0	0	0	0	0	1	0	5	0	0	0	0	1	0	1	22
TD	2	0	0	0	0	0	0	0	0	1	1	0	2	0	0	0	0	2	0	0	8
TELE2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	4
TLFN	18	0	0	0	0	0	0	0	1	0	3	0	4	0	0	1	0	2	0	0	29
TPSA	8	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	1	0	0	12
WCOM	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	10
TOTALS	418	150	1	1	1	1	4	19	6	9	34	6	182	3	8	4	1	65	1	6	949

APPENDIX B

TAT-12/TAT-13 CABLE SYSTEM
MIUS ASSIGNED FOR JOINT USE BY THE PARTIES TO THIS AGREEMENT
U.S. - EUROPE

EASTERN ACCESS PARTIES	WESTERN ACCESS PARTIES																											
	AT&T	BT	DACOM	DBP-T	DGT	FT	HKTI	HTC	IDB	IDC	ITDC	ITJ	KDD	KT	MCI	OPTUS	OTC	PLDT	SINGTEL	SPRINT	TELMEX	TLDD	TRT/FTC	WCOM	TOTAL
APTI	7	0	0	0	0	0	0	0	0	0	0	0	1	1	3	0	0	0	0	1	0	0	0	0	[illegible]
AT&T	198	0	0	0	0	0	0	0	0	2	0	0	5	1	0	0	0	0	0	1	0	0	0	0	[illegible]
BELGACOM	21	0	0	0	0	0	0	0	0	2	0	1	5	1	21	0	0	0	0	1	0	0	0	0	[illegible]
BT	218	198	0	0	1	0	0	0	0	3	0	3	25	1	126	0	0	0	0	1	0	0	0	0	[illegible]
DTE	33	0	0	0	0	0	0	0	0	0	0	0	1	0	16	0	0	0	0	1	0	0	0	0	[illegible]
CYTA	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	[illegible]
DBP-T	120	0	0	1	0	0	0	0	0	15	2	4	10	4	82	0	0	0	0	1	0	0	0	0	[illegible]
FT	84	0	2	0	0	20	0	0	0	3	2	3	10	2	42	0	0	0	0	1	0	0	0	0	[illegible]
HT	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
HTC	8	0	0	0	0	0	0	0	0	0	0	0	2	0	4	0	0	0	0	0	0	0	0	0	[illegible]
IPT	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	[illegible]
MARCONI	2	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	[illegible]
MCH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	35	0	0	0	0	0	0	0	0	0	[illegible]
MCI	97	0	1	0	0	0	0	0	0	3	1	1	11	2	83	0	0	0	0	0	0	0	0	0	[illegible]
NPTT	27	0	0	0	0	0	0	0	0	1	0	1	2	0	12	0	0	0	0	0	0	0	0	0	[illegible]
NT	6	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	[illegible]
OTE	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
SPT	5	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	[illegible]
SPRINT	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	[illegible]
SPT - BA	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
SPT - PHA	4	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	[illegible]
SPTI	26	0	0	0	0	0	0	0	0	2	0	1	4	0	16	0	1	0	0	2	0	0	0	0	[illegible]
ST	26	0	0	0	0	0	0	0	0	2	0	1	4	0	16	0	0	0	0	2	0	0	0	0	[illegible]
TD	3	0	0	0	0	0	0	0	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	0	[illegible]
TELE2	4	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	[illegible]
TLFN	21	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	[illegible]
TLDD	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
TPSA	15	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	[illegible]
TPTI	4	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	[illegible]
VSNL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
WCOM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	[illegible]
TOTALS	958	198	3	1	1	20	7	1	8	38	8	15	92	11	488	3	17	5	3	92	4	5	18	14	[illegible]

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-38

In the Matter of

Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals	RM-8017

REPORT AND ORDER

Adopted: June 24, 1993; Released: July 16, 1993

By the Commission:

I. INTRODUCTION

1. In this *Report and Order*, we amend Part 90 of our rules to allow private carrier paging (PCP) licensees to provide service to individuals for non-business purposes.[1] This action eliminates an unnecessary regulatory restriction on the service options offered by PCP licensees. It will promote competition in the paging industry, thereby increasing the variety and quality of services available to individual paging customers.

II. BACKGROUND

2. Part 90 of our rules currently authorizes PCP licensees to offer commercial paging services to end users who are themselves eligible for licensing under Part 90 and to the federal government. Because Part 90 eligibility is limited to businesses, state and local government agencies, public safety organizations, and other defined entities, private individuals who do not qualify as business licensees are not eligible for a Part 90 license, and therefore are not allowed to obtain paging service from a PCP system. The effect of this rule is to prevent individuals seeking paging service for a non-business purpose from obtaining that service from a private carrier.

3. On February 23, 1993, we adopted a *Notice of Proposed Rule Making* in this proceeding, in which we proposed to allow PCP licensees to provide paging service to individuals as well as other currently eligible users.[2] The *Notice* was based on a Petition for Rule Making filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. (NABER) and endorsed by several supporting commenters.[3] In the *Notice*, we discussed the fact that in a prior proceeding, we had partially relaxed our PCP eligibility rules but had elected not to extend PCP user eligibility to include individuals.[4] Based on the NABER petition and supporting comments, however, we decided to revisit this decision in light of recent, rapid growth in demand for paging services.[5]

4. We received eleven comments and five reply comments in response to the *Notice*.[6] The proposal is supported by most commenters, including NABER, Telocator, American Paging, PacTel Paging, PageMart, PageNet, and several other private paging operators (some of whom are also common carrier paging providers). These parties generally agree that the prohibition on service to individuals arbitrarily restricts consumer choice, inhibits competition, and serves no positive purpose.[7] The only opposition to the proposal comes from certain radio common carriers (RCCs) who contend that it will give lightly regulated PCP licensees an unfair advantage over more heavily regulated RCC licensees.[8] BellSouth argues that we cannot proceed unless we address this regulatory imbalance.[9] while Radio Call proposes that we link changes in our PCP rules to the relaxation of certain common carrier regulations.[10] Finally, Radiofone opposes the proposal under any circumstances, claiming that it goes beyond our legal authority and would undermine common carrier paging.[11]

III. DISCUSSION

5. In the *Notice*, we cited three factors in favor of allowing PCP licensees to serve individuals. First, individual users would benefit from being able to choose between private and common carrier paging alternatives, just as

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[1] As used herein, "PCP" encompasses private carrier paging service at 929-930 MHz, governed by Part 90, Subpart P, as well as service by Business Radio licensees on various paging-only frequencies below 900 MHz, governed by Part 90, Subpart D. Although Subpart D does not refer specifically to "private carrier" paging, Business Radio licensees under Subpart D and private carrier licensees under Subpart P are authorized to provide commercial paging service to identical categories of eligible users. *Compare* 47 C.F.R. §§ 90.75(c)(10) *and* 90.494(a).

[2] Notice of Proposed Rule Making, PR Docket No. 93-38, 8 FCC Rcd 1716 (1993) (*Notice*).

[3] Petition for Rule Making, RM-8017, filed June 14, 1992; *see also*, Rep. No. 1897, June 23, 1992. Comments in support of the petition were filed by PageNet, PageMart, PacTel Paging, and Telocator. No oppositions to the petition were submitted.

[4] *Notice* at paras. 5-6. *See* Report and Order, Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services, PR Docket No. 89-45, 6 FCC Rcd 542 (1991).

[5] *Notice* at paras. 7, 13.

[6] A list of commenting parties is set forth in Appendix B.

[7] *See, e.g.*, PacTel Paging Comments at 2-3, PageMart Comments at 7-11, PageNet Comments at 4-5.

[8] Some supporters of the proposal also raise the issue of regulatory disparity between RCCs and PCPs, but call for the issue to be addressed in a future rule making. Telocator Comments at 4 n.7, PacTel Paging Reply Comments at 2-3.

[9] BellSouth Comments at 6-9.

[10] Radio Call Comments at 2-3. Radio Call "does not oppose" the proposal, provided we concurrently relax our common carrier rules in two areas: (1) by allowing common carrier licensees to obtain additional frequencies without a usage showing, and (2) by granting automatic operational authority to common carrier applicants based on an expedited frequency coordination procedure.

[11] Radiofone Reply Comments at 3-12.

other eligible users do presently.[12] Second, by eliminating the need for PCP licensees to screen customers and impose restrictions on resale, the rule change would make PCP service more widely available and more competitive, particularly in the rapidly-growing retail paging market.[13] Finally, because current paging technology can readily accommodate additional users on existing PCP systems without degradation of service, we perceived no public interest benefit to retaining the existing rule.[14]

6. The comments strongly support our tentative conclusions in the *Notice*. As many commenters note, the demand for paging services has grown dramatically in the past few years and is continuing to climb.[15] Increasingly, this demand is fueled by individual users with non-business as well as business needs for paging service.[16] Because PCP service to individuals is restricted, however, individual paging users are limited to the service options obtainable from a common carrier. In some instances, these options may be sufficient, but the comments indicate that individual users can only benefit from having additional choices. PageMart, for example, notes that non-business individuals seeking nationwide paging service have only three RCCs to choose from, and that RCCs have limited flexibility to switch users from nationwide to local service.[17] Similarly, PageNet contends that RCCs may be unable to keep up with demand for service by individuals in congested markets.[18] In our view, these comments confirm the desirability of increasing the service options available to individual users.

7. The comments also confirm the beneficial impact of our proposal on the ability of PCP licensees to compete. The existing rule, according to most commenters, imposes a disadvantage on PCPs seeking to obtain customers. As Pass Word observes, it is virtually impossible for a PCP licensee to screen customers who may use pagers for both business and non-business purposes, yet failure to do so may result in liability.[19] Pager One and PageMart note that eligibility restrictions have hampered PCP efforts to market their services to individual customers -- including individual business users already eligible under our rules prior to this *Order* -- through major retail outlets.[20] Retail sales of pagers currently account for approximately 20% of the paging market, and many analysts expect this percentage to double within a few years.[21] Thus, eliminating the existing rule will promote greater competition among service providers in a major portion of the paging market.

8. Finally, virtually all commenters agree with our analysis that the restriction on PCP service to individuals serves no useful purpose. As PacTel Paging points out, most individuals seeking paging service do not distinguish between business and personal use, but are simply seeking high-quality service to meet all of their paging needs.[22] PagerOne notes that because of the inconsistency between our paging rules and our SMR rules, which allow service to individuals, it can provide SMR service to individual customers but may not offer those same customers paging service.[23] Even the proposal's opponents appear to concede that the rule is not needed to protect against problems such as frequency overuse or degradation of signal quality.

9. Only one commenter, Radiofone, contends that the existing rule serves a public interest purpose: to protect consumers. Radiofone argues that individual paging customers are not sophisticated enough to deal "on an equal footing" with "unregulated" PCP licensees, and will therefore be victimized by "scams," substandard products, and poor service unless their service options are provided exclusively by common carriers that have been "adjudged by the state to be reputable."[24] We find this argument unpersuasive. To begin with, Radiofone offers no evidence to support its dire predictions of consumer abuse by PCP licensees, nor do we perceive any such evidence in the record. In fact, we believe the primary impact of the existing rule has not been to protect consumers from unscrupulous practices, but to prevent numerous reputable PCP licensees (many of whom also provide common carrier paging service) from offering useful services that would benefit consumers. The comments also demonstrate that where RCC and PCP service providers presently compete for business customers, both have tended to provide better-quality service at lower cost.[25] We are confident that allowing PCPs and RCCs to compete for individual customers will yield similar benefits.[26]

10. For the foregoing reasons, we conclude that the public interest would be served by allowing PCP licensees to serve individuals as well as other eligible users. As noted above, however, some RCC commenters argue that by taking this step, we are contributing to the "blurring" of the distinction between private and common carrier paging. According to Radiofone, this action subverts the common carrier provisions of the Communications Act and is therefore illegal.[27] BellSouth and Radio Call do not go so far, but contend that our action leaves so little practical difference between PCPs and RCCs that we should expand this proceeding to address the issue of disparities between private and common carrier regulation.[28] As discussed below, we are not persuaded by either argument.

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12 *Notice* at paras. 8-9.
13 *Id.* at paras. 10-11.
14 *Id.* at para. 12.
15 *See, e.g.*, PageMart Comments at 8. According to the Economics and Management Consultants International study cited by PageMart, there were approximately 14 million paging subscribers at the end of 1992, with a projected annual growth rate of 19 percent in 1993.
16 *See, e.g.*, PageMart Comments at 9, Telocator Comments at 2. Industry analysts estimate that approximately one-fifth of all paging units are now being used for non-business purposes.
17 PageMart Comments at 6.
18 PageNet Comments at 6-7.
19 Pass Word Comments at 2.
20 Pager One Comments at 1, PageMart Comments at 10.
21 *See* PacTel Paging Comments at 2, PageMart Comments at 9, PageNet Comments at 9.
22 PacTel Paging Comments at 3.
23 Pager One Comments at 1.
24 Radiofone Reply Comments at 14-15.
25 As PageMart points out, no carrier has more than a 12 percent share of the paging market, and competition is increasing. The result has been that while overall industry revenues have grown, the cost of paging service to the customer has fallen steadily. PageMart Comments at 4-5.
26 We also note that the absence of common carrier regulation does not deprive the Commission or the states of the ability to protect consumers from fraud or abusive practices should they occur.
27 Radiofone Reply Comments at 8-13.
28 BellSouth Comments at 8-9, Radio Call Comments at 2.

11. First, our action is fully consistent with the Communications Act, notwithstanding Radiofone's arguments to the contrary. The basic premise of Radiofone's argument is that Congress intended private land mobile service, as defined in Section 332 of the Act, to be limited to special classes of users, and that any paging licensee who provides service to "all comers" must therefore be regulated as a common carrier.[29] These arguments have been addressed in several prior Commission decisions, particularly our *Report and Order* in PR Docket No. 86-404 allowing SMR licensees to provide service to individuals.[30] In that proceeding, we thoroughly reviewed the legislative history of Section 332 and concluded that private carriers may serve individuals as well as other eligible users without any change to their legal status.[31] The same principles that guided our SMR decision are equally applicable here.

12. Second, we reaffirm our conclusion, stated in the *Notice*,[32] that the issues of regulatory parity raised by BellSouth and Radio Call are beyond the scope of this proceeding. While this *Order* does narrow a previously existing distinction between PCPs and RCCs, it does not make them indistinguishable,[33] nor does it require us to examine every remaining distinction before we can take action. In taking this step, we do not rule out the possibility of further addressing the relationship between PCPs and RCCs in a future proceeding as circumstances warrant.[34] Moreover, if BellSouth, Radio Call, or others wish to propose specific regulatory changes to eliminate alleged inequities in our paging rules, they are free to do so by a separate petition for rule making. These considerations are not sufficient, however, to justify delaying the implementation of this *Order*.

13. We are therefore adopting the amended rule as it was proposed in the *Notice*. PacTel Paging requests that we revise the rule text to state that PCP licensees operating on non-commercial "Pool 1" frequencies pursuant to Section 90.494(g) may serve individuals.[35] We consider such a revision unnecessary because this contingency is covered by the rule as drafted. Prior to this *Order*, there was no suggestion that our PCP user eligibility rules varied based on whether a PCP licensee was using a designated commercial frequency or a non-commercial frequency assigned under our inter-category sharing rule. The present rule change also makes no such distinction. To the contrary, it is our intent in adopting this *Order*, which we believe is expressed in the amended text, that *all* PCP licensees be allowed to serve individuals as well as other eligible users regardless of the frequency on which they are operating.

IV. CONCLUSION

14. In our view, allowing PCP systems to provide service to individuals serves the public interest by eliminating an unnecessary regulatory restriction, increasing the alternatives in paging services available to consumers, and promoting improved technology and increased efficiency through competition. For the foregoing reasons, we adopt the proposal set forth in our *Notice*.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

15. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need and purpose of this action.

16. This *Report and Order* amends Part 90 of the Commission's rules to allow private carrier paging systems to provide service to individuals. This change will extend the benefits of private radio communications service to a greater number of users by providing additional service options, and will also increase spectral efficiency by allowing for competition, which spurs technological innovation. This action is intended to remove unnecessary restrictions on the ability of private radio licensees to provide their services.

B. Summary of issues raised by public comments in response to the Initial Regulatory Flexibility Analysis.

17. There were no comments addressed to our Initial Regulatory Flexibility Analysis.

C. Significant alternatives considered and rejected.

18. No significant alternatives were considered.

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[29] Radiofone Reply Comments at 5-6.

[30] Report and Order, Amendment of Part 90, Subparts M and S of the Commission's Rules, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988).

[31] *Id.* at paras. 24-25. Private carriers are, of course, subject to the restriction that they not resell interconnected telephone service for a profit. This *Order* does not remove that restriction, and PCP licensees must continue to abide by it.

[32] *Notice* at para. 12 n.25.

[33] In addition to this rule making, Radiofone claims that our pending proposal to commence exclusive licensing of 900 MHz PCP channels seeks to remove the "last" practical distinction between private and common carrier paging. Radiofone Reply Comments at 3. *See* Notice of Proposed Rule Making, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, 8 FCC Rcd 2227 (1993) (*PCP Exclusivity Notice*). In fact, our PCP proposal imposes rigorous conditions for PCPs to qualify for exclusivity, whereas exclusivity for RCCs is automatic. Moreover, even if the proposal is adopted, many PCP licensees will continue to operate on shared frequencies.

[34] We note that the budget reconciliation bill now pending in Congress contains amendatory language to the Communications Act that could modify the distinction between common and private carriage in the land mobile services. We cannot be certain what impact, if any, this legislation would have on private paging licensees in general, or on those who choose to serve individual customers in particular. In our view, however, it is premature to address the legislation's impact unless and until it is enacted, at which point we can take appropriate action if necessary.

[35] PacTel Paging Comments at 4-5. Pool 1 frequencies are primarily set aside for licensees operating internal, non-commercial paging systems. *See* 47 CFR § 90.494(a). Neither our existing eligibility rules nor this *Order* are intended to apply to such licensees, who are prohibited from providing commercial service of any kind. Pursuant to Section 90.494(g), however, PCP licensees may provide commercial service on unoccupied Pool 1 frequencies if there is no available Pool 2 frequency in the area.

VI. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(a), Part 90 of the Commission's Rules, 47 CFR Part 90, IS AMENDED as set forth in Appendix A below.[36]

20. IT IS FURTHER ORDERED that this *Report and Order* will be effective thirty days after publication in the *Federal Register*.

21. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

22. For further information regarding this *Report and Order*, contact David L. Furth, Private Radio Bureau, Policy and Planning Branch, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 90 - Private land mobile radio services

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.75 is amended by revising paragraph (c)(10) to read as follows:

§ 90.75 Business Radio Service

(c) * * *

(10) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subparts B, C, D, or E of this part, and representatives of Federal Government agencies.

* * * * *

3. Section 90.494(a) is amended by revising the third sentence of footnote 1 to read as follows:

§ 90.494 One-way paging operations in the 929-930 MHz band.

(a) * * *

[1] * * *

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees in providing one-way paging communications to individuals, persons eligible for licensing under subparts B, C, D, or E of this part, and representatives of Federal Government agencies.

* * * * *

[36] In our pending rule making on PCP exclusivity, we have proposed additional revisions to Section 90.494 that would move the user eligibility provision to a new Section 90.494(c). *See PCP Exclusivity Notice*, Appendix A. Should we adopt our exclusivity proposal, the amendment adopted by this *Order* will be incorporated into Section 90.494(c).

APPENDIX B

LIST OF COMMENTING PARTIES

Comments

American Paging
BellSouth
First National Paging
NABER
PacTel Paging
PageMart
PageNet
Pager One
Pass Word
Radio Call
Telocator

Reply Comments

American Paging
NABER
PacTel Paging
PageMart
Radiofone

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NYNEX Telephone Companies — Transmittal Nos. 177, 204

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: July 2, 1993; **Released: July 6, 1993**

By the Associate Bureau Chief, Common Carrier Bureau:

1. On April 8, 1993, NYNEX Telephone Companies (NYNEX) filed Transmittal No. 177 to expand NYNEX Enterprise Service (NES or Enterprise) to include DS1 and DS3 transmission speeds.[1] NYNEX also proposes to offer several optional features with its NES DS1/DS3 service.[2]

2. MFS Communications Company, Inc. (MFS) filed a petition on April 26, 1993, to reject or, alternatively, to suspend and investigate Transmittal 177.[3] NYNEX filed a reply on May 3, 1993.[4] MFS argues that because the proposed optional features are functionally equivalent to currently tariffed services, Transmittal 177 contains discriminatory rates. MFS Petition at 2-6. MFS also argues that Transmittal 177 is unsupported by cost data. *Id.* at 7-13. MFS contends the proposed channel termination rates are excessive. *Id.* at 12. Finally, MFS argues that the proposed service appears to violate the Commission's prohibition against bundling customer premises equipment. *Id.* at 13-14.

3. In its reply, NYNEX argues that NES services are not "like" currently tariffed services because they have significantly different operating characteristics which provide customers with improved service provisioning and a variety of optional features. NYNEX Reply at 3-8. NYNEX also argues that for the services offered under Transmittal 177, costs are fully recovered from revenues generated by this service. *Id.* at 8-13. Finally, NYNEX contends that the proposed service does not involve any bundling of customer premises equipment. *Id.* at 13-14.

4. The Common Carrier Bureau has reviewed NYNEX Transmittal Nos. 177 and 204, and all related submissions. We conclude that no compelling argument has been presented that the tariff is patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

5. Accordingly, IT IS ORDERED that the petition to reject or, alternatively, to suspend and investigate NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 177, filed by MFS Communications Company, Inc. IS DENIED.

6. IT IS FURTHER ORDERED that the motion to accept a late-filed pleading filed by MFS Communications Company, Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jill Ross Meltzer
Associate Bureau Chief
Common Carrier Bureau

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[1] Unlike NYNEX's current Enterprise DS0 offering introduced in Transmittal 127, NES DS1/DS3 service does not include bundled equipment. *See* NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 127, Order, 8 FCC Rcd 693 (Com. Car. Bur. 1993), *review pending*.

[2] These optional features include Demand Reconfiguration, Scheduled Reconfiguration, Bandwidth on Demand, Emergency Planning, and Dual Homing. Description and Justification at 3. NYNEX filed Transmittal No. 204 on June 17, 1993 to clarify, among other things, its description of the Emergency Planning feature.

[3] The MFS petition was filed one business day late, accompanied by a motion to accept late-filed pleading. NYNEX argued that MFS' petition should not be considered because there was no showing of good cause for the untimeliness. Because of the briefness of the delay, we do not believe NYNEX is prejudiced by our acceptance of the MFS petition, or that the Commission was inconvenienced by the delay. Therefore, we will grant the motion.

[4] On April 23, 1993, the Independent Data Communications Manufacturers Association (IDCMA) submitted a letter to the Commission questioning whether Transmittal 177 included bundled multiplexers on customer premises. Letter from H.E. Marks and D.A. Nall to C.A. Tritt, Chief, Common Carrier Bureau, Apr. 23, 1993, at 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-61

In the matter of

Amendment of Part 90 of the
Commission's Rules to Adopt
Regulations for Automatic
Vehicle Monitoring Systems

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and Microwave Division
Private Radio Bureau

ORDER EXTENDING REPLY COMMENT PERIOD

Adopted: July 6, 1993; Released: July 7, 1993

By the Chief, Land Mobile and Microwave Division:

1. On March 11, 1993, the Commission adopted a Notice of Proposed Rule Making in the above-captioned proceeding.[1] The specified deadlines for comments and reply comments were June 29, 1993 and July 14, 1993, respectively. On June 28, 1993, the Part 15 Coalition requested that we extend the date for filing reply comments to August 15, 1993. In support of their request, the Part 15 Coalition indicates that the 15 days now provided for filing reply comments from the date comments are due is inadequate to acquire the original comments, prepare a response and coordinate a reply with all of the Part 15 Coalition members.

2. In addition to the arguments presented by the Part 15 Coalition, we note that we received 85 comments in response to the *Notice* approximately 30 of which are substantial comments involving technical issues requiring time consuming evaluation. We therefore agree that the public interest would be served by providing interested parties with some additional time to perform technical analyses and, where possible, develop an industry consensus. In our view, however, a thirty (30) day extension on the reply comment date is excessive, and would cause an unacceptable delay in our regulatory processes.

3. Accordingly, IT IS ORDERED, pursuant to Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the Motion for Extension of Time filed by the Part 15 Coalition is GRANTED to the extent indicated herein and otherwise denied, and that the deadline for filing reply comments in response to the subject *Notice of Proposed Rule Making* is extended to July 29, 1993.

[1] Notice of Proposed Rule Making, PR Docket No. 93-61, 8 FCC Rcd 2502 (1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
July 1, 1993

Released: July 1, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry M. Warner, Esq.
P.O. Box 601
Crossville, TN 38557

In Reply Refer To:
7120-2
IVDS/C
6.93

RE: Applications of John Calvin Kemmer, Inter Vivos Trust

Dear Mr. Warner:

This is to advise you that the Interactive Video and Data Service (IVDS) applications for John Calvin Kemmer, Inter Vivos Trust, have been dismissed and the simultaneously filed waiver requests that seek, as you state, "the Commission to suspend or waive any rule prohibiting the acceptance of [the application]" have been denied for the reasons set forth below.

The filing periods for the markets for which John Calvin Kemmer, Inter Vivos Trust applied are closed. In addition, we note that at the time the IVDS applications and waiver requests were filed, trusts were not eligible to apply for IVDS licenses. The change to the eligibility requirements for IVDS made in the Second Memorandum Opinion and Order (MO&O), PR Docket 91-2, shall apply to IVDS applicants that file during filing periods that will occur subsequent to the effective date of the MO&O, June 1, 1993.

In order to preserve the finality of the filing periods for IVDS and other private radio services, it is not the policy of the Private Radio Bureau to re-open filing windows for late applicants unless there has been a substantial change in the service rules. As you concede, this is not the case here. *See* MO&O at paragraphs 11 (stating that the change to make trusts eligible is a "minor editorial revision"). We note, for example, that in a different matter addressed in the MO&O, we offered to reinstate only those applicants that paid at least $35 and filed their applications during the filing periods concerned. Accordingly, because you failed to file the applications during IVDS filing periods, IT IS ORDERED that the IVDS applications ARE DISMISSED.

With respect to the waiver requests, the applicable authority section governing the requests is 47 C.F.R. § 1.931. The waiver requests do not specify which IVDS rule(s) are the subject of the request and are not supported by a showing of good cause. Accordingly, for the reasons stated above, IT IS FURTHER ORDERED that the waiver requests ARE DENIED. The IVDS application fees that you submitted shall be refunded under separate cover.

Sincerely,

Marcus D. Stevens
Chief, Special Services Branch

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-79

Amendments of Part 69 of the
Commission's Rules Relating to
the Creation of Access Charge
Subelements for Open Network
Architecture

ERRATUM

Released: July 13, 1993

On March 23, 1993, the Commission released a Report & Order in this proceeding. *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Report & Order, CC Docket No. 89-79, FCC 93-133, 8 FCC Rcd 2104 (1993). Below is a correction to Appendix A of this item.

Section 61.49(h) of the Commission's rules should read as follows:

> (h) Each tariff filing by a local exchange carrier subject to price cap regulation that introduces a new service or a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that is or will later be included in a basket, or that introduces or changes the rates for connection charge subelements for expanded interconnection, as defined in § 69.121 of this chapter, must also be accompanied by
> * * * * *

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-309

In re Applications of

FRANK K. SPAIN	File No. BPH-900119MN
LOS AMIGOS MEDIA, A LIMITED PARTNERSHIP	File No. BPH-900122MM
KIMLER BROADCASTING, INC.	File No. BPH-900122MN
LAURA WILKINSON HERRON	File No. BPH-900122MY
AVID COMMUNICATIONS, INC.	File No. BPH-900122NF
NATALIE LEDERER ROGERS	File No. BPH-900122NN

For Construction Permit for a
New FM Station on Channel 233A
in Temecula, California

Appearances

Henry A. Solomon, Esq. on behalf of Frank K. Spain; *Mark D. Schneider, Esq.* on behalf of Los Amigos Media, A Limited Partnership; *Lewis J. Paper, Esq.* on behalf of Kimler Broadcasting, Inc.; *James A. Gammon, Esq.* on behalf of Artistic Airwave Broadcasters; *Arthur V. Belendiuk, Esq.* on behalf of Laura Wilkinson Herron; *Bruce A. Eisen, Esq.* on behalf of Avid Communications, Inc.; *Robert E. Levin, Esq.* on behalf of Natalie Lederer Rogers; and *James W. Shook, Esq.* on behalf of the Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: July 9, 1993; Released: July 19, 1993

PRELIMINARY STATEMENT

1. This proceeding presently involves the mutually-exclusive applications of Frank K. Spain ("Spain"), Los Amigos Media, A Limited Partnership ("Los Amigos"), Kimler Broadcasting, Inc. ("Kimler"), Artistic Airwave Broadcasters ("AAB"), Laura Wilkinson Herron ("Herron"), Avid Communications, Inc. ("Avid") and Natalie Lederer Rogers ("Rogers") for a construction permit for a new FM station on Channel 233A in Temecula, California.[1] In the *Hearing Designation Order* released on November 25, 1991 (*"HDO"*), the Mass Media Bureau of the Federal Communications Commission (the "FCC" or "Commission") designated these applications for a comparative hearing on the following issues:

> (1) If a final engineering impact statement is issued with respect to Spain, Los Amigos, TVB, Kimler, Herron, AnnGie, Avid, Rogers or TCLP in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the respective proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319, and if not, to determine whether the effect thereof on the respective applicants' basic qualifications to be a Commission licensee;[2]
>
> (2) To determine whether there is a reasonable possibility that the tower height and location proposed by AnnGie would constitute a hazard to air navigation;
>
> (3) To determine which of the proposals would, on a comparative basis, best serve the public interest; and
>
> (4) To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

A prehearing conference was held on January 23, 1992, and hearing sessions were held on April 21 through April 23, 1992 (Tr. 1-4). The record was closed on April 23, 1992. *See Order*, FCC 92M-499, released April 27, 1992.

2. On July 9, 1992 by *Memorandum Opinion and Order*, FCC 92M-763, the record was reopened and the following issues were specified:

> (1) To determine whether Stephen Cilurzo, the purported 40% owner in Artistic, knowingly made false representations and was otherwise lacking in candor in his hearing testimony in the above-referenced matter; and

[1] Applications for a new station also were filed, designated for hearing, and later dismissed voluntarily by Temecula Communications, a California Limited Partnership ("TCLP"), The AnnGie Corporation ("AnnGie") and Temecula Valley Broadcasting ("TVB"). *See Order*, FCC 92M-253, released February 27, 1992; *Order*, FCC 92M-453, released April 8, 1992; *Order*, 92M-561, released May 15, 1992.

[2] This issue was resolved with respect to Los Amigos, AnnGie, Rogers and Spain following timely-filed amendments to their applications. *See Order*, FCC 92M-54, released January 14, 1992; *Order*, FCC 92M-53, released January 14, 1992; *Order*, FCC 92M-44, released January 10, 1992; *Order*, FCC 92M-37, released January 9, 1992. This issue also was resolved favorably to Avid, Kimler and TVB by Orders of the Presiding Judge. *See Order*, FCC 93M-162, released February 5, 1992; *Order*, FCC 92M-160, released February 5, 1992. This issue was resolved favorably with respect to TCLP and Herron by Orders of the Presiding Judge. *See Order*, FCC 92M-26, released January 8, 1992; *Order*, FCC 92M-161, released February 5, 1992.

(2) To determine whether, in light of the evidence adduced under the foregoing issue, Artistic has the character qualifications to be a broadcast licensee.

The matter came on for hearing December 1, 1992.

FINDINGS

Frank Spain

3. Spain, a white male, applied as a sole proprietor for the FM broadcast station on Channel 233A in Temecula, California (Spain Ex. 1, p. 1).

4. *Diversification.* Spain serves as officer, director, and controlling shareholder of WTVA, Inc., licensee of WTVA(TV), and WO7CK (LPTV-CP), Tupelo, Mississippi. Spain also owns a 50% interest in an MDS station at Palm Springs, California, and owns an MDS station at Tupelo. Both MDS stations are licensed as communications common carriers (Spain Ex. 1, p. 6).

5. *Integration.* Spain will work full-time (not less than 40 hours per week) at his FM station, serving as general manager. He will reduce or terminate his business and other activities in order to fulfill his integration commitment (Spain Ex. 1, p. 1). Initially, Spain will be responsible for station construction and licensing. On a day-to-day basis Spain will control station operations and will establish and implement policies and practices, including those relating to staffing, programming, production, administration and finances, advertising and promotion, and community relations. Spain will also be in charge of the station's EEO program (*Id.*).

6. Spain and his wife own land in the Temecula area and have been part-time residents of Temecula since 1987.[3] Should Spain's application be granted he will permanently relocate his residence from Hobe Sound, Florida, to Temecula or to a location within his station's principal service contour (Spain Ex. 1, p. 2).

7. Spain, an engineer and broadcast-telecommunications entrepreneur, has been involved in broadcasting since 1941, when as a teenager, he served as part-time Chief Engineer of an AM station in his hometown of Tupelo, Mississippi. Between the mid-1940's and into the early 1950's, Spain was an engineer for NBC in Washington, D.C. and New York City, and participated in the development of television technology, including color television. He then served as Director of Engineering at an AM-TV operation at Syracuse, New York (Spain Ex. 1, pp. 4-5). In 1957 Spain established television station WTVA(TV), NBC, Channel 9, Tupelo, and was its general manager for approximately 20 years. He remains active in station affairs, serving as an officer and director of the licensee, WTVA, Inc. Between the late 1970's and 1991, WTWV, Inc., controlled by Spain, was the licensee of CBS affiliate WTVX(TV), Channel 34, Ft. Pierce, Florida. Spain moved to the Ft. Pierce area shortly after the station was acquired and was directly involved in the station's day-to-day operations until WTVX(TV) was sold.[4] Through Central Television, Inc., Spain also operated WHTV(TV), Channel 24, Meridian, Mississippi. During the 1970's Central acquired WHTV as a "dark" station in receivership. Under Spain's direction, WHTV was reconstructed, restored to service, and operated primarily as a satellite of WTVA(TV). The station subsequently became a full service outlet affiliated with CBS. It was sold in 1985. Between 1981 and 1986, Alainde, Inc. (Central's subsidiary), owned WYDE-AM, Birmingham, Alabama. Spain served as Alainde's president and a director and participated in station management (*Id.* at pp. 2-4).

8. *Auxiliary Power.* Spain will install auxiliary power generators at his proposed station's studio and transmitter sites in order to ensure service continuity (Spain Ex. 1, p. 6).

Los Amigos Media, A Limited Partnership

9. *Diversification.* Los Amigos does not have any other interests in media of mass communications (Los Amigos Ex. 2, p. 1). Annie M. Gutierrez, the sole general partner of Los Amigos, does not have any other interests in media of mass communications (Los Amigos Ex. 2, p. 1). Aside from his interest in Los Amigos, Mr. Padilla does not have any interests in media of mass communications (*Id.*).

10. Los Amigos is a California limited partnership comprised of one general partner and one limited partner (Los Amigos Ex. 1, p. 1). Annie M. Gutierrez is the sole general partner of Los Amigos and holds a 50% equity interest in Los Amigos (*Id.*). Ms. Gutierrez and Mr. Padilla are responsible for contributing equal amounts of capital to Los Amigos, and have contributed equal amounts of capital to Los Amigos during the preparation, filing and prosecution of Los Amigos' application (*Id.*).

11. *Integration.* If Los Amigos' application is granted, Annie M. Gutierrez, its general partner, will serve full-time as general manager of Los Amigos' station, working a minimum of 40 hours per week in that capacity, terminating all other employment to fulfill this commitment (Los Amigos Ex. 3, p. 1). As general manager, Ms. Gutierrez will oversee all aspects of the operation of the station, including administration, personnel, programming, sales, budgeting, and community relations (*Id.*). In overseeing the operation of the station, Ms. Gutierrez's responsibilities will include the hiring and supervision of personnel, the oversight of the programming and the supervision of sales efforts at the station (*Id.*).

12. As the sole general partner and managing partner of Los Amigos, Ms. Gutierrez has full and exclusive control of the management, conduct and operation of Los Amigos. *See* Los Amigos Limited Partnership Agreement (AAB Ex. 4, § 5.01). Pursuant to the Limited Partnership Agreement, Ms. Gutierrez has power and authority to take action from time-to-time as she may deem to be necessary, appropriate or convenient in connection with management and conduct of Los Amigos' business and affairs, including without limitation the power to:

(a) Acquire, hold, sell or lease property, including real or personal property, for the use of the Partnership upon the terms and conditions as the general partner may, from time-to-time, determine to be advantageous to the partnership;

[3] Spain's captioned application was filed in January 1990.

[4] Spain had promised to dispose of his interest in WTVX(TV) prior to initiating program tests at Temecula (Spain Ex. 1, p. 6).

(b) Dispose of Partnership property, either in the ordinary course of the business of the Partnership, or, from disposition to be in the best interest of the Partnership; ... and

(c) Take any and all other action that is permitted by law and that is customary in or reasonably related to the conduct of the Partnership business or affairs.

See AAB Ex. 4, § 5.01.

13. Ms. Gutierrez selected the applicant's name, Los Amigos, and has overseen all aspects of preparing, filing and prosecuting Los Amigos' application for the new FM station in Temecula, California (Los Amigos Ex. 1, p. 1). Ms. Gutierrez decided that Los Amigos should be formed as a limited partnership and contacted an attorney to prepare the Agreement of Limited Partnership of Los Amigos Media (*Id.*). Ms. Gutierrez also personally contacted and retained a communications attorney to counsel and to assist Los Amigos in filing and prosecuting the application (*Id.*). Ms. Gutierrez also hired the engineering firm of Lohnes and Culver to prepare Los Amigos' proposal for the Temecula, California, for the purpose of securing a transmitter site for the proposed station (*Id.* pp. 1-2).

14. Ms. Gutierrez also was responsible for preparing a budget estimating the cost of constructing and operating Los Amigos' proposed station for three months without revenue and for securing the requisite financing for Los Amigos' station (Los Amigos Ex. 3, p. 2). Ms. Gutierrez opened all of Los Amigos' bank accounts, and is the only signatory on these accounts (*Id.*) Ms. Gutierrez receives all statements and invoices and makes all payments on behalf of Los Amigos (*Id.*). Aside from his provision of a personal financial statement and his signature on various partnership documents, Mr. Padilla had no role in these activities (*Id.*).

15. Los Amigos' sole limited partner, Mr. Oscar Padilla, will not have any role at Los Amigos' proposed station. Mr. Padilla does not have the right to take part or to have a voice in the control, management, or operation of Los Amigos (Los Amigos Ex. 1, p. 1; AAB Ex. 4, § 6.01). Mr. Padilla does not have the authority or the power to act as an agent for or on behalf of Los Amigos, to do any act that would be binding upon Los Amigos, or to incur any expenditures with respect to Los Amigos or its assets (*Id.*; AAB Ex. 4, § 6.01). Additionally, Mr. Padilla is prohibited from acting as an employee of Los Amigos, and from serving, in any material capacity, as an independent contractor or agent with respect to Los Amigos' media enterprise (*Id.*; AAB Ex. 4, § 6.01). Mr. Padilla is not permitted to communicate with Annie Gutierrez, the general partner of Los Amigos, on matters pertaining to the day-to-day operations of Los Amigos' media business (*Id.*; AAB Ex. 4, § 6.01).

16. Although Mr. Padilla is completely insulated from the management and the control of Los Amigos' proposed station, he may vote on certain matters, including the dissolution of the partnership and the disposition of the partnership's property. More specifically, Subsection 6.02(a) of the Limited Partnership Agreement provides Los Amigos' limited partners with the right to vote on:

(1) The dissolution and winding up of the Limited Partnership . . . ;

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or a substantial part of the assets of the Limited Partnership other than in the ordinary course of its business; and

(3) A material change in the nature of the Partnership's business.

AAB Ex. 4, § 6.02(a). Subsection 6.02(b) provides that the actions described in Subsection 6.02(a) "may be taken" by the General Partner "following the vote of a Majority in Interest of the Limited Partners." (AAB Ex. 4, § 6.02(b)).

17. Section 6.02 of the Limited Partnership Agreement thus permits Mr. Padilla to vote on the sale of all or substantially all of Los Amigos' assets, including its proposed station (AAB Ex. 4, § 6.02(a)(2); Tr. 702). Because Mr. Padilla owns 50% of Los Amigos as its only limited partner, Mr. Padilla's consent would be needed to approve a sale of the station proposed by Ms. Gutierrez (Tr. 704-05). If Mr. Padilla and Ms. Gutierrez disagreed about such a disposition of the station, the matter would be resolved by a court of competent jurisdiction (Tr. 703).

18. Ms. Gutierrez, a Hispanic female, plans to relocate to Temecula, California, and reside there if Los Amigos' application is granted (Los Amigos Ex. 3, p. 2).

19. For more than ten years, Ms. Gutierrez has resided in the town of Bonita, California (Los Amigos Ex. 3, p. 2; Tr. 695). From 1982 to the present, Ms. Gutierrez has served on the Board of Directors of Obrero, Inc. ("Obrero"), a Temecula based non-profit corporation providing health education and care to farm workers living in Temecula (Los Amigos Ex. 3, p. 2). The Board of Directors of Obrero meets in Temecula, and Ms. Gutierrez has travelled to Temecula numerous times in order to attend these meetings (*Id.*).

20. Obrero sponsors people from the School of Health at Loma Linda University to travel to Temecula, California, for the purpose of providing health education and treatment to farm workers (Los Amigos Ex. 3, p. 3). As a director of Obrero, Ms. Gutierrez often accompanied the health care workers to Temecula to observe the health education and treatment provided to the farm workers (*Id.*).

21. At present, Obrero is actively seeking to expand the services that it provides to the residents of Temecula (Los Amigos Ex. 3, p. 3). Ms. Gutierrez is involved in examining the needs of the Temecula community and the ways in which Obrero effectively can provide further assistance to Temecula (*Id.*). Ms. Gutierrez has received no compensation from Obrero for her services (Tr. 707).

22. From 1951 to 1955, while a teenager, Ms. Gutierrez worked at Station KROP(AM), in Brawley, California, on a part-time basis after school. At KROP(AM), Ms. Gutierrez produced a weekly 4-H program of 15-30 minute duration, served as a disc jockey, and sold advertising time to local businesses after school as a teenager (Los Amigos Ex. 3, p. 3; Tr. 708).

23. *Auxiliary Power.* Los Amigos will install emergency power generating equipment at its main studio and transmitter sites so that broadcasts can continue even in the event of a power outage (Los Amigos Ex. 4, p. 1).

Kimler Broadcasting, Inc.

24. Kimler is a corporation organized under the laws of the State of California (Kimler Ex. 1, Articles of Incorporation). Kimler's Articles of Incorporation authorize the creation of two classes of stock. The first class ("Common Stock") constitutes the voting stock of the corporation. The second class ("Non-Voting Stock") does not have any voting rights. Helen Jones holds 1,000 shares of Common Stock; there presently are no holders of Non-Voting Stock in Kimler (Kimler Ex. 1, p. 1). Jones is Kimler's only officer and director (*Id.*).

25. At or about the time Kimler was organized in January of 1990, Chester P. Coleman entered into a subscription agreement for 1,000 shares of Kimler's Non-Voting Stock (*Id.*). Mr. Coleman retained his interest in Kimler for nearly two years and then abandoned this interest by agreement dated November 14, 1991 (*Id.*). Article V of Kimler's Articles of Incorporation expressly states that Non-Voting stockholders "shall not serve as officers, directors or agents of the corporation and are prohibited from taking part in the day-to-day operation of the business of the corporation." Additionally, it states that voting stockholders shall have "the exclusive voting rights and powers, and the holders of Non-Voting shares shall not be entitled to notice of any shareholders' meeting, or to vote upon the election of directors or upon any other matter." (Kimler Ex. 1, Articles of Incorporation, p. 2).

26. *Diversification.* Neither Kimler nor Jones has any cognizable media interests. Jones has pledged to resign her current position as director of national sales with KCKC/KORB-FM (Kimler Ex. 3).

27. Jones alone has managed the affairs of the corporation. For example, she communicated with Kimler's counsel and engineering consultants in the preparation of the FCC application; she arranged for the publication of local notice; she established the public inspection file; she located Kimler's proposed transmitter sites and arranged for Kimler's use of the sites; she paid all the bills; and she communicated with counsel concerning the prosecution of Kimler's application (Kimler Ex. 1, pp. 1-2).

28. *Integration.* Kimler proposes to integrate Helen Jones into the management of its proposed station as the general manager and sales Manager of Kimler's proposed station on a full-time basis at least 40 hours per week (Kimler Ex. 2, p. 1). As general manager, Ms. Jones will oversee all operations of the station, including, but not limited to, the hiring and firing of personnel, programming, sales and business policies (*Id.*). As sales manager, Ms. Jones will oversee the development and implementation of sales policy at the station (*Id.*). If Kimler's application is granted, Ms. Jones will resign from her current employment position (*Id.*).

29. Ms. Jones owns property in Canyon Lake, California, which is within the 1 mV/m contour of Kimler's proposed station (Kimler Ex. 2, p. 1). From 1984 to 1987, Ms. Jones resided in Canyon Lake and worked at Stations KFXM/KDUO at San Bernardino, California (*Id.*). San Bernardino is not within the service area of Kimler's proposed station (*See Joint Engineering Exhibit,* Figures 1, 2).

30. Since 1987, Ms. Jones has not resided at her Canyon Lake residence on a full-time basis. From 1987 to July of 1990, Ms. Jones leased her Canyon Lake residence and resided and worked outside of her proposed service area in Newport Beach (*Id.*). Although the lease for the Canyon Lake residence terminated in July of 1990, from July of 1990 to January 1992, Ms. Jones continued to work and reside in a rented apartment in Newport Beach on weekdays (Kimler Ex. 5, p. 1).

31. Ms. Jones does not propose to relocate her residence to Temecula if Kimler's application is granted (Kimler Ex. 3).

32. Ms. Jones has had minimal civic involvement in the service area of Kimler's proposed station. Between 1984 and 1987, Ms. Jones participated in two food drives conducted by her employer, a licensee of radio stations located outside Kimler's proposed service area whose coverage contours cover a portion of Kimler's proposed service area (Kimler Ex. 2, pp. 1-2). From 1984 to 1987, Ms. Jones participated for four weeks in a community campaign during Christmas time to raise food for the needy (Kimler Ex. 2, p. 2). From 1984 to 1987, Ms. Jones also participated in a summer "can" drive performed in conjunction with 7-UP, General Cinema Theatres and Goodwill Industries (Kimler Ex. 2, p. 2).

33. From January 27, 1992 until the present, Ms. Jones has served as the director of national sales for Stations KCKC/KBON-FM at San Bernardino, California (Kimler Ex. 2, p. 2). From late February of 1987 to January of 1992, Ms. Jones worked in the sales department of Station KOCM-FM at Newport Beach, California, first as the national sales manager and then as a senior account executive (*Id.*). From 1979 to 1987, Ms. Jones served as a sales account executive for Stations KFXM/KDUO in San Bernardino, California (Kimler Ex. 2, p. 2). From 1972 to 1976, she served as an advertising consultant for Station KNOB in Anaheim, California (*Id.* p. 3). Prior to her position at Station KNOB in Anaheim, Ms. Jones served for over four years as the station manager and sales manager for Station KOLA in Riverside, California (*Id.*). Before joining Station KOLA, Ms. Jones worked as a sales account executive for Stations KFXM/KDUO at San Bernardino, California, from April 1964 to September 1967.

34. *Auxiliary Power.* Kimler proposes to install auxiliary power at both the studio and transmitter sites to ensure continued operation in the event of any power outage (Kimler Ex. 4).

Artistic Airwave Broadcasters

35. AAB is a general partnership. The two general partners are Audrey T. Cilurzo who owns 60% of the partnership, and Stephen M. Cilurzo, who owns 40% of the partnership. Audrey T. Cilurzo is the stepmother of Stephen M. Cilurzo (AAB Ex. 1).

36. In late 1989, Mrs. Cilurzo saw an article in a newspaper reporting the allocation of a new FM radio station to Temecula. Mrs. Cilurzo telephoned her son, who asked her to read the article to him and then send it to him. She complied with both requests (Tr. 416-17, 618).

37. Stephen Cilurzo subsequently visited his stepmother and advised her of his interest in filing an application for the new FM station in Temecula. He suggested that his stepmother join with him in making the application and that she be given 60% of the ownership interest in the application. Stephen Cilurzo stated that he made this suggestion to his stepmother because he wanted to give his parents an opportunity to recoup the monies they had loaned to Valley Public Radio for the operation of Station KRTM (Tr. 421-22, 619-22). Mrs. Cilurzo understood that, as the 60% owner of the applicant, she would be responsi-

ble for 60% of the costs (which she has in fact paid (Tr. 423, 622). Stephen acknowledged under cross-examination that he invited his stepmother's participation because he anticipated that he would need her financial assistance. That financial assistance could prove to be particularly important because Stephen Cilurzo knew that other parties could file competing applications and, if so, prosecution expenses would increase (Tr. 419-23, 622).

38. At the time he spoke to his stepmother about joining in an application for the new Temecula FM station, Stephen Cilurzo knew about the enhancement credit that was then awarded by the FCC for female participation (Tr. 431-32).

39. In addition to the partnership agreement, Stephen Cilurzo assumed responsibility for preparation of Artistic's Form 301 application. Mrs. Cilurzo provided information concerning EEO matters and her civic activities (Tr. 440-442). As part of his preparatory work for Artistic's application, Stephen Cilurzo prepared a budget for Artistic's proposed station. Stephen discussed it with his stepmother. After discussions on more than one occasion, Mrs. Cilurzo and Stephen Cilurzo together formulated their budget (Tr. 442-43, 660). Together they went over each paragraph and made changes in their partnership documents (Tr. 624, 626-28). Stephen was responsible for the first draft of the costing, but Mrs. Cilurzo had the better ideas as to employee salaries and those types of operational matters, and she reviewed and inquired about each equipment item eventually specified (Tr. 443-44, 656). Mrs. Cilurzo discussed possible choices of application engineers and agreed with Stephen's recommendation (Tr. 489, 630). After a budget was prepared, Stephen contacted his father-in-law, Edward P. Smith, to secure a commitment for financing to cover the estimated costs.

40. After Artistic's application was filed, Stephen Cilurzo made arrangements for publication of notice of the filing of Artistic's application in a local Temecula paper (Tr. 455). Since Stephen does not live within the service area, Mrs. Cilurzo provided a suggestion as to where Artistic could maintain its public file in Temecula and made the call to set it up. Stephen Cilurzo then established the public inspection file at that location (Tr.449).

41. After AAB's application was filed, a problem developed with its proposed transmitter site (Tr. 449). Stephen was responsible for securing a new transmitter site (Tr. 450). Mrs. Cilurzo suggested the new site as a possibility and Stephen followed up and secured it (Tr. 464, 632). After securing a new site, Stephen Cilurzo contacted AAB's engineer and had a new engineering portion of the application prepared (Tr. 451, 633-34). An amendment to AAB's application was prepared (Tr. 454; Kimler Ex. 10 (AAB amendment dated June 11, 1990)). Stephen was responsible for preparing the revised costs estimates that were contained in that amendment (Tr.453). Mrs. Cilurzo discussed AAB's bills with Stephen (Tr. 436) and she discussed the need to increase the financial commitment (Tr. 636).

42. Sometime after filing the June 11, 1990 amendment, AAB changed legal counsel (Tr. 456). Stephen was responsible for the decision to change counsel (Tr. 455-56, 524). Mrs. Cilurzo discussed with Stephen and with third persons qualifications of the suggested communications counsel before the change was made (Tr. 640, 642, 521, 525).

43. *Integration.* Both Audrey Cilurzo and Stephen Cilurzo propose to work full-time (no less than 40 hours per week) in managerial capacities at the proposed station (AAB Ex. 1).

44. Mrs. Cilurzo will serve as the station's general manager and will oversee all areas of station operations, including the EEO program. Mrs. Cilurzo presently manages the Cilurzo Vineyard and Winery at Temecula. All but one employee (the Wine Master) are managed by her. That company has three employees and four part-time employees. She is a corporate director, officer and co-owner of that company. The winery has been put up for sale (AAB Ex. 1).

45. Stephen Cilurzo, currently sole owner and manager of Infovideo Productions and San Diego Digital Post, a corporate video production company in San Diego, will serve as the station's operations manager and technical director. He will oversee the routine, day-to-day operations, supervise the air staff, and, as the station's chief engineer, will supervise all technical operations.

46. Both Audrey Cilurzo and Stephen Cilurzo will establish station policy. Both will be responsible for hiring and firing, with Audrey Cilurzo having the final authority in case of conflict (AAB Ex. 1, p. 2; Tr. 664).

47. Both Mrs. Cilurzo and Stephen will terminate their current and any future employment and any current and future business activity/interests prior to initiation of program tests in order to effectuate their integration proposals (AAB Ex. 1, p. 2).

48. AAB seeks enhancement credit for the following civic activities in Temecula or within the proposed service area of the station:

Audrey T. Cilurzo

1971-1980	Member, Board of Directors, Temecula Union School District (Was elected by School Board members to be representative to Temecula's Riverside County School Board Organization Committee.) Member of a rapidly growing school district. She and four other members were responsible for the hiring of new teachers. She was on the panel that interviewed applicants. She worked three times a week in various classrooms so she had a feel for the strengths and problems of the district. The district added two new schools and the budget tripled during her tenure as the district grew. She worked on County committees to improve curriculum, and another committee that took care of County school district boundary issues, and interdistrict transfers (AAB Ex. 1, p. 3).

Approx. 1979-1986	Temecula 4-H Community Leader and Child Counselor. Temecula until five years ago was a rural community. Many young people belonged to the 4-H and they had a variety of projects. Her club was the largest in the County, over 100 members from 9 to 19 years of age. Projects included: dairy, swine, sheep, poultry, rabbits, horses, cooking, sewing, leadership and citizenship. In 4-H parents are involved as are children, so her group had over 200 people. Members are taught responsibility, self-confidence, public speaking, record keeping and good citizenship. Besides her leadership at the community level, she was involved in committees at the County level, planning exhibits and judging at various fairs, planning presentations and awards programs and working with older 4-H members training them to help and teach younger members. She also trained parents interested in becoming 4-H leaders. In her capacity as leader, Mrs. Cilurzo directed all other local 4-H leaders (Tr. 580-81). She represented Temecula 4-H at county-wide meetings (Tr. 581; AAB Ex. 1, p. 4).
1978 - Present	Temecula 4-H Leader. Two meetings per month and full-time (40 hours) for the week the fair is going on. Over the years she has led groups of young people in many projects: poultry, rabbits, sheep, sewing, and citizenship. She also is a regional leader for boy scouts working for their citizenship of the world badge (AAB Ex. 1, p. 4).
1985 - Present	Chairman, 4-H Riverside County Regional Awards Committee. 4-H members earn many awards and there is a complex group of requirements by members to earn these medals, stars and awards. She worked on this committee for many years and was chairman and secretary. Presently she is the awards advisor to her club members (Tr. 543; AAB Ex. 1, p.4).
1986	4-H Club Leadership Advisor. After several years as leadership leader, she became advisor to a group of members from Riverside County. She took them to Sacramento for training and to the University of California at Davis. This group returned to their own clubs and became leaders and then went to Washington, D.C. for a national leadership conference (AAB Ex. 1, p. 5).
Approx. 1983-1990	Member, Temecula Chamber of Commerce. Participated three years on the Tourism Committee (currently two hours every other week); Mrs. Cilurzo chaired this committee. She was on a committee to start the Chamber in 1983 (Tr. 519). She also was the winery representative when the Chamber organized the first "Balloon & Wine" Festival. This was to become the largest and best known Chamber event and fund raiser (Tr. 569-70; AAB Ex. 1, p. 5; Tr. 550).
Approx. 1981-1983	Vice President, East Side Water Association. The association sued for loss of riparian water. She spent 50 hours reading back minutes and this material was used in the lawsuit. They won $3.5 million. Two years ago the water district manager was cited and convicted of conflict of interest and giving contracts to companies of which he owned an interest. The original evidence went back to their lawsuits. She attended all water district meetings for almost three years, sporadically since (AAB Ex. 1, p. 6).
Approx. 1985-1986	Member, Citizens Committee to Elect Dale Holmes, Riverside County School Superintendent. Active involvement on local educational issues.

1990-Present	Member, "Wine Country Community" Committee to establish Community Service Area 149 a road district within Temecula Wine Country. Participated in fundraising activities and spoke at hearing before the Riverside County Board of Supervisors. They worked for 10 years to start a road district, finally the Wine Country Committee was formed. They held fund raisers on her land, dances, B.B.Q's and picnics. This money was used to pay legal fees, mail newsletters, put up stop signs and community bulletin boards. Finally their road district was formed (AAB Ex. 1, p. 7).
1987-1990	Member, Riverside Country Planning Commission Committee to Establish a new vineyard citrus agricultural area within the 25 Year Master Plan for Southwest Riverside County. Participated in bi-monthly meetings in neighborhood and county area. As Temecula began to grow many new subdivisions were built. They were concerned that the citrus-vineyard area would disappear. They worked for three years with the Riverside County Board of Supervisors to form an agricultural region. This they have done. Their area cannot be broken into lower than five acres, no subdivisions, no sewers and incentives for citrus groves and grape vineyards to stay large and stay in agriculture. They feel people moved to the Temecula area because it is semi-rural, and they want to protect their rural countryside (AAB Ex. 1, p. 7). Mrs. Cilurzo was selected for this committee by fellow residents and participated in many meetings and also in monthly meetings with County representatives and the Board of Supervisors (Tr. 594-596).
1978-Present	Buyer and Supporter, Riverside Country Farmers Fair, 4-H and Future Farmers of America Junior Livestock Auction.

Stephen Cilurzo

Mid-1983-Present	Stephen Cilurzo is a licensed amateur radio operator (KA6YBC) and has been an active member of Amateur Radio Emergency Service (ARES). He has participated in simulation nets and on-site drills providing emergency communications in time of disaster. He owns an amateur radio repeater which covers Temecula and nearby areas, and which is utilized by ARES during the fire season to provide backup communications for hard-to-reach areas of Southwest Riverside and San Diego Counties. This activity is termed a "red flag" patrol conducted in an area called "Deluz," which includes part of the Temecula City limits (Tr. 386-387, 390-391). Brush fires are considered a real threat to the Temecula area because it is so dry there (Tr. 386). Mr. Cilurzo has spent eight to ten days or half days per year rendering this service (Tr. 386, 520).

49. AAB seeks credit for the past local residence of Stephen Cilurzo in Temecula and for his commitment to establish his residence in Temecula in the event the AAB application is granted. Mr. Cilurzo was a full-time resident of Temecula from 1969 to 1982 at the following address: 30089 Mira Loma Drive, Temecula; 44554 La Paz, Temecula; and 41884 - 5th Street, Temecula (AAB Ex. 1, p. 10). AAB seeks credit for Mrs. Cilurzo's full-time local residence within Temecula since 1969 through the present. She resides at 41220 Calle Contento, Temecula, California and, prior to that, at 30089 Mira Loma Drive, Temecula (AAB Ex. 1, p. 11).

50. AAB also seeks credit for the past broadcast experience of Audrey T. Cilurzo and Stephen M. Cilurzo. Mrs. Cilurzo was a founder, secretary and member of the Board of Directors of Valley Public Radio, Inc., former licensee of noncommercial educational station KRTM, licensed to Temecula, California. She was actively involved in the operation of KRTM from 1978 to 1981, acting as liaison into the community and ascertaining Temecula's needs, and setting up programs for school or youth organizations (Tr. 617; AAB Ex. 1, p. 11).

51. Stephen M. Cilurzo has had the following broadcast experience (AAB Ex. 1, pp. 11-12):

2/83 - 3/89	KGMG(AM-FM), Oceanside, California. Director of Engineering, responsible for the entire engineering operations of the station. Completely rebuilt the studios, including building design and renovated FM transmission system. Full-time.

10/84 - 5/85	KKOS(FM), Carlsbad, California. Chief Engineer responsible for all studio and RF Operations. On call concurrently while employed at KGMG. One day per week.
8/82 - 2/83	KMAX(FM), Arcadia, California, and KPPC(AM), Pasadena, California. Chief Engineer of both stations, audio, RF, studio design. Rebuilt transmitter facilities.
6/79 - 8/82	KRTM(FM), Noncommercial Radio Station, Temecula, California. General Manager, Founding President of Board of Directors, and Technical Director. Responsible for day-to-day operation of the radio station. This local broadcast station "emerged" from Stephen Cilurzo's "initiative" (Tr. 411).
1/76 - 11/79	KAVO(FM), Fallbrook, California. Music Director and Afternoon Drive Personality.
6/73 - 2/74	KUCR(FM), Riverside, California. On-air Announcer, Production Producer.
9/72 - 6/73	KNOW(AM-FM), Escondido, California. On-air Announcer and Newscaster.
Approx. 1/72 - 12/72	KPRO(AM), Riverside, California. On - air Personality, Production Producer.
Approx. 1/71 - 12/72	KFXM/KDUO(FM), San Bernardino, California. Personality and Newscaster.
9/70 - 11/71	KVCR(FM), San Bernardino, California. Producer and Announcer. Was paid staff member and host of "Valley College Concert" nightly classical show.
1/67 - 10/67	KPFK(FM), Los Angeles, California. Production Assistant, Announcer, part-time.

52. *Auxiliary Power.* AAB proposes to utilize auxiliary power at both its studio and transmitter site to ensure continuous broadcast operations in the event of a power outage (AAB Ex. 1, p. 12).

53. *Diversification.* Neither Audrey Cilurzo nor Stephen Cilurzo has any attributable interests in any media of mass communications. The Cilurzos will each divest of any after-acquired attributable interests (AAB Ex. 1, p. 13).

54. *Misrepresentation Issue - AAB.* Competing applicants, Kimler, Los Amigos and Avid ("Joint Petitioners") jointly petitioned for the character issue against Artistic on the basis of Stephen Cilurzo's testimony at hearing: (1) that he resigned as general manager of Valley Public Radio's ("VPR") noncommercial radio station KRTM, Temecula and left town in mid-August 1982; (2) that KRTM was on the air when he left the station; (3) that the station was taken off the air at some point approximately two weeks to 30 days after he left the station; and (4) that, when he left, he did not anticipate that the station would be taken off the air.

55. In support of their motion, the Joint Petitioners supplied (a) the declarations of Bill Harker, a former VPR Board Member and Stephen's successor as president, and Nancy Maurice, the former VPR secretary, who had worked with Stephen at VPR; (b) the contemporaneous report of two other Temecula residents, Jim Dublino and Karen Kelly, concerning the cessation of service by the station (the "Kelly-Dublino Proposal"); and (c) a letter to the FCC from Stephen Cilurzo, dated September 8, 1982, advising the Commission of the station's cessation of service on August 30, 1982.

56. In the pleadings Harker averred that, in a telephone call shortly after KRTM's cessation of service, Stephen Cilurzo advised him that he, Stephen Cilurzo, had taken the station off the air. The Kelly-Dublino Proposal confirmed that assertion: "Jim Dublino and Karen Kelly were present at the September 3, 1982 meeting of the [VPR] Board. During that meeting it was disclosed that KRTM had been turned off by the station general manager, Steve Cilurzo, due to nonpayment of the electrical and telephone bills on August 28th. At that time, he consulted with the president of Valley Public Radio, Bill Harker, and made him aware of his decision to temporarily terminate the station's operation." It was alleged that the foregoing evidence was further confirmed by Stephen's letter to the FCC, in which he (a) informed the Commission that KRTM had gone off the air due to "financial difficulties"; (b) requested authority for KRTM to remain "dark" for 90 days; and (c) requested that all correspondence concerning the matter be directed to VPR in care of "Stephen Cilurzo, President" at his Los Angeles address. AAB opposed the Motion on June 16, 1992, and the Joint Petitioners replied to the Opposition on June 30, 1992.

57. At hearing Stephen Cilurzo testified that he left Temecula and KRTM on August 15, 1982, moving his personal belongings to his natural mother's home in Los Angeles (Tr. 746-47). He commenced working full-time at KPPC/KMAX(FM), Pasadena/Arcadia, California on August 16, 1982 as chief engineer (AAB Ex. 11; Tr. 747). He was totally immersed in his KPPC/KMAX job, working at four different transmitting sites, some 90 miles from Temecula (Tr. 753-755).

58. Before he left Temecula, Stephen Cilurzo gave notice to the VPR (KRTM) Board of Directors. In July he notified the Board he was looking for full-time employment elsewhere and about August 11, 1982 he gave the Board notice that he had accepted a new job in the Pasadena area and was leaving (Tr.749). Again, before he left, Stephen introduced Frank Cordell to the Board as a person who would handle the day-to-day KRTM broadcast operations, doing everything Stephen Cilurzo had been doing; Cordell was to take over the position (Tr. 750-52, 498). At this meeting, an arrangement was worked out with the Board that Cordell would live in Stephen's house where the studio and studio equipment were located and would operate Station KRTM on a day-to-day basis; the living arrangement was part of Cordell's compensation from VPR but he was also to receive a small salary and a commission on sponsorships obtained (Tr. 772-73, 865). The Board

agreed to pay Stephen Cilurzo's mortgage payment after he left (Tr. 751). The Board was to save money under this arrangement because it was cheaper than the monetary arrangement with Stephen Cilurzo had been (Tr. 772).

59. Stephen Cilurzo testified that it would have been impossible for him to continue as KRTM's general manager from 90 miles away since the manager's job entailed going into the Temecula community, performing as on-air announcer, reading the news, soliciting donations (sponsorships) and overseeing day-to-day operations (Tr. 753). When this issue was raised, Stephen Cilurzo hired a private investigator to find Frank Cordell, but the search was unavailing (Tr. 775-779).

60. Further, had he anticipated KRTM would cease broadcasting, Stephen testified he would have sold its transmitter (exciter pledged to him) to KMAX instead of advertising for one for KMAX. The exciter would adapt to the KMAX transmitter and he would have had a ready market for a sale which would have reduced some of the more than $18,000 owed him by VPR (Tr. 776, 819).

61. After he had left Temecula and KRTM, and had been living and working in the Los Angeles/Pasadena area for some two weeks (late August or early September, 1982), Stephen learned in a telephone call with a Dan Paulson that KRTM had gone off the air (Tr. 755). Stephen did not anticipate this would happen; he neither took it off the air nor told anyone to do so (Tr. 756). However, because VPR owed him over $18,000 and his father $12,000, Stephen returned to Temecula and secured the transmitter and other equipment because he did not want it attached by other VPR creditors (Tr. 819, 824, 830, 866).

62. To take Station KRTM off the air (assuming electricity had not been shut off by the power company), would involve the answering service, which served as remote control duty operators, calling up the transmitter or, if already off for the night, simply not placing it in operation in the morning. The only other way would be to visit the transmitter and do it manually (Tr. 756-758). To put Station KRTM back on the air if electricity was not shut off, only a call to the answering service would be necessary, or a visit to the transmitter (Tr. 759).

63. After the station had been off the air for some weeks, he took the KRTM equipment which had been pledged to him against the VPR debt. Stephen Cilurzo informed the VPR Board he would withhold it until the Board developed a firm financial plan or located a suitable buyer for KRTM (Tr. 866).

64. KRTM was more valuable as a going entity than it was off the air, and Stephen testified he did not want it shut down. But since it had been, he felt obligated to protect his and his family's investment until the Board developed a plan or found a buyer (Tr. 828, 925).

65. Promptly upon learning that the instant issue had been specified against AAB, Stephen Cilurzo contacted the power company to determine whether it had shut off power to KRTM and caused it to leave the air (Tr. 781). He was told no records back to 1982 were available. When a Doug Davies was identified by the Joint Applicants just before this hearing as a person at the power company with knowledge of the KRTM shut down, Stephen Cilurzo contacted Mr. Davies personally. However, Mr. Davies told Stephen he could not "remember much," could not get "involved," and could not tell Stephen Cilurzo anything which would refresh his (Cilurzo's) memory back to 1982 (Tr. 782-784). He did tell Stephen that the lawyers had told him if Jim Gammon called, Davies was to refer him to the "legal department" (Tr. 784). When Stephen called back to obtain a face-to-face appointment to discuss this further, Mr. Davies, through his secretary, informed that there could be no meeting before the December 1, 1992 hearing here (Tr. 785).

66. On January 15, 1983, Stephen attended a VPR Board meeting and, on the basis set forth above in paragraph 63, declined to return the KRTM equipment which had been pledged to him. Thereafter, in February/March 1983, Stephen commenced six years of working at KUDE/KJFM, Oceanside, California, and four years of living at 3100 Ocean Street, Carlsbad, California (Tr. 759-760).

67. Mike Anderson, who was associated with KRTM until August 1982 averred that when Stephen left Temecula in mid-August 1982 for the Los Angeles area job, and had taken up residence in Los Angeles, KRTM was still on the air and Frank Cordell was running the station and living in Stephen Cilurzo's home-studio (AAB Ex. 5).

68. Mr. Anderson worked in Temecula at the time and listened to Cordell daily. He called the studio and talked to Cordell and he visited Cordell at the home-studio where Cordell was the only person programming the station and running its day-to-day operations (AAB Ex. 5). Cordell ran the station during the two-three week period it operated after Stephen Cilurzo had left and when it shut down there was talk about a problem with the transmitter and an unpaid utility bill (AAB Ex. 5). Mr. Anderson believes Cordell told him the electricity was shut off because the electric bill had not been paid (AAB Ex. 5). Mr. Anderson dictated his declaration (AAB Ex. 5, pp. 20-21) to Stephen and signed it when it was prepared. (AAB Ex. 5, Tr. 890).

69. Terri McClearen, another long-time resident of Temecula swore that Frank Cordell lived in Stephen's house-studio and ran KRTM after Stephen left Temecula for the Los Angeles area job (AAB Ex. 6). She personally visited Cordell at the home-studio after Stephen had left and she moved into Stephen's home as a tenant in mid-September 1982 "at pretty much the same time" as Cordell moved out (AAB Ex. 6).

70. Ronald C. Perry, was a member of the VPR Board in August-September 1982 and is a long-time Temecula resident. He swore that when Stephen left Temecula and KRTM for the other job,

> Management of KRTM was left with Frank Cordell, who lived in Steve's house while he was managing the station. The station was still on the air when Mr. Cilurzo left town to assume his duties with the new job.

(AAB Ex. 7). Board member Perry verified that Stephen told the Board that Cordell would live in Stephen's house and run the station before Stephen left (AAB Ex. 7).

71. Donna Taylor Clendening, Stephen Cilurzo's natural mother swore that Stephen moved to her residence in Los Angeles on August 15, 1982 and lived there for approximately one month until moving into a Los Angeles area apartment (AAB Ex. 8, p. 23). She presented excerpts from her diary journal which verified this (AAB Ex. 8).

72. Dan Thomas Paulson, a life-long Temecula resident, swore that sometime in the first few weeks of September, 1982, he assisted Stephen in moving and securing the KRTM transmitter. At that time, KRTM was off the air and had been for a week or two (AAB Ex. 9). He further swore

that Stephen had taken a job in Pasadena and was not in Temecula when KRTM went off the air; Paulson had told Stephen that something was wrong at the station and that KRTM was not broadcasting (AAB Ex. 9).

73. In rebuttal testimony, Bill Harker stated that he joined VPR as a Board member in the early 1980's at a time when Stephen Cilurzo was president, Board member and general manager of the station (Joint Petition Ex. 1). The Board held periodic meetings (usually monthly) and met at the station studio which was located in Stephen's home (*Id.*).

74. Sometime in the middle of August 1982, Stephen advised the Board members that he decided to take a job with a radio station in Pasadena (*Id.*). According to Harker, Stephen Cilurzo did not resign as general manager or president, but stated that Frank Cordell, a volunteer who had previously helped Stephen in running the station, would remain in his home and run the station from there (*Id.*). It was his understanding that Stephen would continue to be the general manager of the station and that Frank Cordell would report to Stephen (*Id.*). KRTM went off the air on Saturday, August 28, 1982 (*Id.*). He called Stephen at the Pasadena station. According to Harker, Stephen told him that he decided to take the station off the air temporarily because of an inability to pay the electric bill (*Id.*). The Board at no time authorized anyone to take the station off the air (*Id.*). The Board had not received any notification that the station was about to be shut down (*Id.*). Harker then asked Stephen about the FCC and Stephen said he would take care of it (*Id.*). Other than call Stephen, Harker made no inquiry into the matter (Tr. 1120). He indicated that he did not need to make post-shutdown inquiries because he knew the electric company was owed $325 or $365 (Tr. 1122).

75. According to Harker, the Board met on September 3, 1982 to discuss getting the station back on the air (*Id.*). Eventually the Board received a number of proposals and each required the use of existing station equipment (*Id.*). According to Harker, Stephen refused to make the equipment available unless a financial plan was adopted which would enable Stephen to get back some, if not all, of the station money owed to him by VPR (*Id.*).

76. On cross-examination, Harker admitted that at the time Stephen Cilurzo left, the Board had an employee living in Stephen's house running the station, that no new studio was needed or contemplated and that the Board had access to the Cilurzo house-studio equipment and even met there (AAB Ex. 6, Tr. 1061, 1094-1095).

77. Harker went to the District Attorney complaining that Stephen Cilurzo had disappeared and stole the KRTM transmitter (Tr. 1104). Harker admits, however, that no efforts were made to locate Stephen at his home or employment (Tr. 1107, 1009). He states that he would not have gone to the District Attorney had he known that the transmitter had been pledged to Cilurzo (Tr. 1111).

78. Nancy Maurice testified that some time in the middle of August 1982, Stephen Cilurzo took a job with a Pasadena radio station. He advised the other Board members of his new job and explained that Frank Cordell, a volunteer who had previously assisted Mr. Cilurzo, would remain at Mr. Cilurzo's house to run the station. However, Mr. Cilurzo did not tender his resignation orally or in writing, and the Board did not appoint Mr. Cordell as general manager. It was her understanding that Mr. Cilurzo would remain the general manager and that Mr. Cordell would report to Mr. Cilurzo. She remembers being told by Bill Harker that he had talked to Mr. Cilurzo and that Mr. Cilurzo said he had taken the station off the air. At a meeting of the Board shortly after the station went off the air, Board members expressed concern that Mr. Cilurzo had shut the station down. The Board had never authorized Mr. Cilurzo or anyone else to take the station off the air. As far as she knew, the Board had never received prior notice from Mr. Cilurzo or Southern California Edison Company, the power company, that power was about to be shut off for failure to pay the bill.

79. On cross-examination she testified that after Stephen Cilurzo left town, she was always aware that Cordell took over the essential duties that Stephen Cilurzo had as general manager (Tr. 1296). She adamantly tried to establish that Cordell was not "general manager," asserting that Stephen Cilurzo was supposed to solicit KRTM sponsorships from 90 miles away and pay the long-distance charges out of his own pocket (Tr. 1296). First, she said there was an oral understanding between the Board and Cilurzo on this point, then admitted there was none (Tr. 1297, 1298). Finally, she agreed with the evidence of Board member Ronald C. Perry that Cordell was managing at KRTM after Cilurzo left but, she said, he was not "general" manager (AAB Ex. 7; Tr. 1329). She conceded it was a fine line (Tr. 1329).

80. Mr. Davies in his affidavit described the procedures the electric company followed as a matter of policy with respect to discontinuance and restoration of service. He could not testify that those procedures were followed with respect to KRTM (Joint Petition Ex. 4).

81. Douglas Davies stated that he spoke with Stephen sometime in the Summer of 1982 concerning KRTM's failure to pay its bills, informing him power could be shut off if the electric bill was not paid (*Id.*). He believes this was shortly before service was discontinued, but does not relate whether this conversation was after KRTM had already shut down or before (*Id.*). Mr. Davies states he got Stephen's telephone number by calling Audrey Cilurzo and asking for it (*Id.*).

82. On surrebuttal Stephen Cilurzo testified that until after KRTM ceased broadcasting, the answering service would pick up any calls Cordell did not, and Cordell was in regular contact with this service. Cordell had Stephen's Pasadena telephone number (Tr. 1337-1338).

83. Audrey Cilurzo testified on surrebuttal that Davies never called her for Stephen's telephone number in the Summer of 1982 or any other time. She knows this because she would have remembered, she didn't have the number after he left Temecula that Summer and she would not have given out his number if she had been asked (Tr. 1181).

84. She was sure that he never called her for Stephen's number in the two week period between Stephen Cilurzo's leaving Temecula and KRTM going off the air (August 15-28, 1982). She knew this because on August 13, 1982, she took her children and other to the Farmers Fair in Hemet, came home for one day (Monday, August 23), spent the day washing clothes and animals, wasn't around the telephone that day, left for the California State Fair in Sacramento the next day (August 14, 1982), and remained there until Labor Day, September 6, 1982 (Tr. 1182-1187). She did this every year back then (Tr. 1192).

Laura Wilkinson Herron

85. Ms. Herron is a female, individual applicant (Herron Ex. 2, p. 1).

86. *Integration.* In the event that Ms. Herron's application is granted, she will be integrated into the day-to-day management of the Temecula, California station on a full-time basis (at least forty hours per week) as the general manager. Ms. Herron's responsibilities and duties will include, but are not limited to: (Herron Ex. 2, p. 1).

> Overall management of station operation and personnel, including supervisory staff;
>
> Formation and implementation of personnel policies.
>
> Formation and implementation of station's EEO program, including policy dissemination, recruitment, and training;
>
> Management of the financial affairs of the station; and
>
> Ensuring compliance with all FCC Rules and Policies.

87. Ms. Herron claims enhancement credit for her broadcast experience. Ms. Herron has the following broadcast experience: (Herron Ex. 2, pp. 1-2)

11/90 - Present	Director of Northern California Educational Television Association, Inc., licensee of KIXE-TV, Channel 9 Redding, California
11/87 - Present	KAlF-FM Red Bluff, California
	Executive Vice President, General Sales Manager, On-Air Personality, Vice Chair-Board of Directors
11/87 - 9/1/90	KBLF-AM Red Bluff, California
	Executive Vice President, General Sales Manager, On-Air Personality, Vice Chair-Board of Directors
1986 - 1987	KGTV, Channel 10 San Diego, California
	On Camera Talent (part-time)
1982 - 1987	KCBQ-AM/FM San Diego, California
	Announcer, Music Director
1980 - 1982	KPRI-FM San Diego, California
	Announcer, Music Director
1979 - 1980	WLUP-FM Chicago, Illinois
	On-Air Personality
1979	WQSR-FM Sarasota/St. Petersburg, Florida
	Announcer, Music Director, Public Service Director
1978	KWKA-AM, KTQM-FM Clovis, New Mexico
	Announcer, Account Executive, Public Service Director/Public Affairs Director

88. In the event her application is granted, Ms. Herron will terminate any and all employment she may have, including corporate offices and directorships held, and relocate her residence to Temecula, California (Herron Ex. 2, p. 3).

89. *Diversification.* Ms. Herron has the following media interests: She is a 15% stockholder and officer/director of McNulty Broadcasting Corporation, licensee of station KALF-FM at Red Bluff, California. Ms. Herron presently works as the station's executive vice-president, general sales manager and as an on-air personality (Herron Ex. 3, p. 1).

90. Ms. Herron is 33% limited partner in Desert Rock Limited Partnership, applicant for a new FM station at Healdsburg, California[5] (Herron Ex. 3, p. 1).

91. The following relatives of Ms. Herron have ownership interests in McNulty Broadcasting Corporation, licensee of station KALF-FM, Red Bluff, California: (Herron Ex. 3, p. 1)

Gary D. Herron	Ex-Husband	15%
Burton F. Wilkinson	Father	30%
Mary C. Wilkinson	Mother	30%
Charles Wilkinson	Brother	10%

Gary D. Herron and Charles Wilkinson are 33% general partners in Desert Rock Limited Partnership, applicant for a new FM station at Healdsburg, California (*Id.*, Herron Ex. 3, p. 1).

92. In the event the construction permit for the Temecula, California station is granted to Ms. Herron, she will terminate any employment she may have with McNulty, including corporate offices and directorships held, and divest herself of all interest or connections with KALF-FM, Red Bluff, California (Herron Ex. 3, p. 1).

93. *Auxiliary Power.* Ms. Herron will install an auxiliary power generator at the studio and transmitter of the station to keep the station on the air during periods of inclement weather when regular power is not available. Ms. Herron will also install a battery operated studio to transmitter link in order to maintain transmission during period of telephone or power outages (Herron Ex. 4, p. 1).

[5] On June 9, 1992, Desert Rock Limited Partnership filed a motion to dismiss its application for the new FM station at Healdsburg, California.

Avid Communications, Inc.

94. Avid Communications, Inc. is a corporation, the president, secretary, director and sole stockholder of which is James Andrew Fakas ("Fakas"), the original petitioner responsible for the assignment of Channel 233A to Temecula in MM Docket No. 88-65 (Avid Ex. 1, p. 1).

95. *Diversification.* Fakas presently resides in the State of Hawaii, where he is the president, director, and 100% stockholder of Sirius Communications, Inc., licensee of Station KLUA(FM) at Kailua-Kona, Hawaii, said station operating on Channel 230C at an ERP of 40kw (Avid Ex. 1, p. 1).

96. *Integration.* Fakas will serve as the Temecula station's general manager and work at least 40 hours per week in that capacity, a minimum of five days per week, overseeing all of the operations of the station and managing the business of the station on a day-to-day basis so that sales, programming, engineering and other station personnel will report directly to him (Avid Ex. 1, p. 1-2). He will have supervisory responsibility for all aspects of the station's operation, and will function as liaison between the station and local community organizations and leaders, relocating his residence so that he can meet his commitment to the station (Avid Ex. 1, p. 2).

97. If Avid's application is granted, Fakas will divest himself of all of his interest in Station KLUA(FM), including all ownership, official, directorial and operational duties prior to, or upon commencement of, program tests for the proposed Temecula station (Avid Ex. 1, p. 2). Furthermore, if prior to a grant of Avid's application, Fakas becomes engaged in any other broadcast activity or any other business that would prevent him from meeting his commitment to the Temecula facility, he intends to cease such activities in all respects prior to the commencement of program tests for the proposed Temecula station (Avid Ex. 1, p. 2).

98. Fakas has had past broadcasting experience at Station KCAL(AM/FM), Redlands, California (1971-1986), where he worked as a disc jockey, programming and news director, and as chief engineer, his duties including on-air activities, operational matters relating to format and news, and technical matters relating to station operations (Avid Ex. No. 1, p. 2). From 1971-1986, he served as the general manager of the stations with the responsibility of overseeing the day-to-day management of the facilities (Avid Ex. 1, p. 2). Since 1989, and to the present, Fakas has been the general manager of Station KLUA(FM) at Kailua-Kona, Hawaii where he has similarly overseen the day-to-day management of the radio station, thereby having the responsibility for executing, planning and carrying out the organizational structure of the licensee (Avid Ex. 1, pp. 2-3). In that capacity, Fakas has been responsible for recruiting and hiring all personnel and for supervising the execution of duties by management personnel and the staff so as to operate as the superior voice in ultimate decision-making (Avid Ex. 1, p. 3).

Natalie Lederer Rogers

99. *Diversification.* Rogers is an individual applicant for the Temecula, California FM station (Rogers Ex. 1, p. 1). She neither owns nor holds any other media interests (*Id.*).

100. *Integration.* Rogers will work full-time, at least 40 hours per week, as general manager of the proposed station (Rogers Ex. 1, p. 1). In that capacity, she will manage the day-to-day affairs of the station and will have ultimate decision-making responsibility over all station operations. Her duties as general manager will include, but will not be limited to, formulating and implementing station policies, coordinating and supervising department heads, managing station finances and overseeing the station's technical and administrative operations through her consultants and various department heads (*Id.*). Rogers is currently employed as a real estate agent in the State of California (*Id.*). In order to effectuate her plan to work full-time as general manager of the Temecula station, she will terminate her employment as a real estate agent and will hold no other employment (*Id.*).

101. Rogers presently resides in Palm Desert, California (Rogers Ex. p. 2). She will move to Temecula, California, and will reside there within the proposed station's city of license on a full-time permanent basis in the event her application is granted (*Id.*).

102. *Auxiliary Power.* Rogers' proposed station will be equipped with auxiliary power generating equipment at both the studio and transmitter sites which, in the event of a partial or complete commercial power failure, will permit the station to provide continuing service to the public (Rogers Ex. 1, p. 2).

Comparative Coverage

103. All of the areas proposed to be served by the applicants presently receive five or more aural services during daylight hours and at night (Joint Ex. p. 1). The following table sets forth the total areas and populations that the applicants will cover within their respective 1 mV/m contours:

Applicant	Area (Sq. Km.)	Population
Rogers		
Original site	1,680	360,953
Amended site	1,705	182,388
Spain		
Original site	1,870	206,548
Amended site	1,635	249,621
Los Amigos		
Original site	1,540	148,616
Amended site	1,910	170,284
Kimler	1,475	176,842
Artistic	1,585	121,940
Herron	1,985	173,999
Avid	1,480	173,093

(Joint Ex., Table II).

CONCLUSIONS OF LAW

Frank K. Spain

104. *Diversification.* Spain has not promised to divest his ownership interest in WTVA, the licensee of Station WTVA(TV) and LPTV Station WO7CK, Tupelo, Mississippi. Nor has he promised to resign as an officer and director of that corporation. Officers and directors of a broadcast licensee are considered to have a cognizable interest in the entity with which they are associated. *See* 47 C.F.R. §73.3555, Note 2(h). Likewise, he has not promised to divest his interest in the two MDS facilities that he owns in Mississippi and California. Those interests are clearly

cognizable under the diversification criterion. *See* the Commission's observation that, "[w]ireless cable is a multichannel video service that is similar to cable television in the type of programming that it provides, but differs from cable in that it uses microwave radio channels rather than hardware to transmit that programming to subscribers." *Second Report and Order,* 6 FCC Rcd 6792 (1991). Thus, an interest in an MDS station is as significant as an interest in a CATV system; and CATV interests, even distant ones, have long been recognized as significant in applying the diversification analysis. *Resort Broadcasting Co., Inc.,* 27 RR 2d 1379, 1385 (1973) (a 6% interest in CATV systems in a distant state held significant under the diversification criterion). Accordingly, Spain must be assessed a moderate to substantial demerit under the diversification criterion for his other media interests.

105. *Integration.* Spain has proposed to work full-time at his FM station as general manager. He plans to accomplish this pledge by reducing or terminating his business and other activities. However, to receive integration credit, an applicant must advance a specific proposal, must adhere to it and must establish reasonable assurance that the plan will be carried out. *Royce International Broadcasting,* 5 FCC Rcd 7063 (1990). In situations were an applicant proposing full-time integration into a new broadcast station has other substantial ongoing business interests, a generalized promise to reduce the time spent on a significant business interest is insufficient. *Leininger-Geddes Partnership,* 2 FCC Rcd 3199 (Rev. Bd. 1987), review denied, 3 FCC Rcd 1181 (1980). The Review Board has held that the very existence of other business interests renders questionable the integration commitment in the absence of an additional showing by the applicant of the reliability of its integration proposal. *Blancett Broadcasting Co.,* 17 FCC 2d 227, 230 (Rev. Bd. 1969). Applicants have the burden to establish how they will effectuate their integration proposals. *Cuban-American Limited,* 5 FCC Rcd 3781, 3785 (1990). To meet this burden the applicant must present a detailed and convincing plan as to how it will accommodate outside business interests with its integration proposal. *Naguabo Broadcasting Company,* 6 FCC Rcd 912, 924 n. 63 (Rev. Bd. 1991).

106. Spain is the president, and a director of three broadcast corporations, owns significant interests in two MDS facilities and owns two microwave common carriers that serve customers in Mississippi and California. Spain has neither described his current responsibilities, nor specified how much time he presently devotes to his various business obligations. Additionally, he has presented no evidence to establish how he would extricate himself from these obligations following a grant of his FM application nor has he specified any limit on the amount of time he would devote to those obligations. In sum, Spain's pledge to reduce or terminate his business and other activities is a vague and generalized promise similar to the ones which the Review Board has consistently rejected. *See Pleasure Island Broadcasting, Inc.,* 6 FCC Rcd 4163, 4165 (Rev. Bd. 1991). In light of the foregoing, it is ruled that Spain is not entitled to any integration credit.

Los Amigos Media

107. *Diversification.* Neither Los Amigos nor Ms. Gutierrez have any other interests in media of mass communications. Similarly, Oscar Padilla, the insulated limited partner of Los Amigos, does not have any interests in media of mass communications.

108. *Integration.* Los Amigos proposes to integrate Annie M. Gutierrez, its sole general partner, into the full-time management of the station, a minimum of 40 hours or more per week. Ms. Gutierrez will terminate all present employment and serve as the station's full-time general manager. Los Amigos is credited with 100% full-time integration credit because it has demonstrated the *bona fides* of its organizational structure.

109. Los Amigos' Limited Partnership Agreement properly contains the insulatory provisions required by the Commission's rules and policies governing attribution of ownership. *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities,* 58 RR 2d 604, 620-21 (1985) (*"Attribution Rules"*). The Agreement prohibits Mr. Padilla, Los Amigos' sole limited partner, from, among other things, acting on behalf of Los Amigos and communicating with Annie Gutierrez, Los Amigos' sole general partner, about the day-to-day operations of the proposed station. Mr. Padilla has not participated in any action related to the prosecution of Los Amigos' application, and all rights afforded Mr. Padilla in the Limited Partnership Agreement are consistent with the Commission's attribution rules and policies. Additionally, the record demonstrates that Ms. Gutierrez has acted consistent with her position as the sole general partner of Los Amigos, performing all of the activities related to the formation of Los Amigos and the prosecution of its application.

110. Los Amigos is entitled to minority status enhancement credit because Annie M. Gutierrez, its sole general partner, is a Hispanic female.

111. Los Amigos is entitled to receive credit for Ms. Gutierrez's proposed relocation to Temecula, California, if Los Amigos' application is granted.

112. Ms. Gutierrez's proposed participation is enhanced by her civic involvement. For over ten years Ms. Gutierrez served on the Board of Directors of Obrero, Inc. ("Obrero"). A non-profit organization that provided health care to those who could not afford it in Temecula. On a number of occasions, Ms. Gutierrez supervised the provision of health care or travelled to a California hospital to arrange for health care to be provided. The record does not quantify the amount of time spent during this ten year period, nor does it specify the actual involvement. The enhancement credit for civic involvement is deemed to be slight.

113. Los Amigos claims credit for Ms. Gutierrez's prior broadcast experience. For approximately four years, in early 1950, Ms. Gutierrez worked at station KROP(AM), in Brawley, California, on a part-time basis after school hours. Ms. Gutierrez produced and broadcast a weekly 30 minute program focusing on the 4-H Club, served as a Saturday evening disc jockey, and sold advertising time to local businesses. Los Amigos is entitled to a very slight enhancement for broadcast experience.

114. *Auxiliary Power.* Los Amigos' proposal is enhanced by its proposal to provide auxiliary power at both its studio and transmitter sites.

Kimler Broadcasting Inc.

115. *Diversification.* Neither Kimler or Ms. Jones has any cognizable media interests. Ms. Jones has pledged to resign her current position as Director of National Sales with KCKC/KOBN-FM.

116. *Integration.* Kimler is entitled to full quantitative credit for the integration proposal of its sole stockholder, Helen Jones. Kimler's Articles of Incorporation sufficiently insulate Non-Voting Stockholders from participating in the affairs of the applicant.

117. Kimler's proposal is enhanced by Ms. Jones' residence within the 1 V/m contour of the proposed station. Ms. Jones lived for three years (1984-1987) in the service area (Canyon Lake, California) (Herron Findings). During 1987-1990, Ms. Jones resided outside the service area but made frequent trips to Canyon Lake. From 1990 to 1992, Ms. Jones spent weekends in Canyon Lake while residing in Newport Beach.

118. Kimler's proposal is slightly enhanced by Ms. Jones' civic activities. Ms. Jones' civic activities occurred within the service area of the proposed Temecula station between 1984 and 1987 while she worked at KFXM/KDUO. Ms. Jones participated in the annual food and can drives that the station promoted.

119. Kimler's proposal is further enhanced by Ms. Jones' past broadcast experience and its intent to provide auxiliary power.

Artistic Airwave Broadcasters

120. *Diversification.* Neither Stephen Cilurzo nor Audrey Cilurzo has any attributable interests in any medium of mass communications.

121. *Integration.* AAB is entitled to 100% integration credit for its proposal to have Stephen Cilurzo (40% equity) and Audrey Cilurzo (60%) each work in a managerial capacity full-time, no less than 40 hours per week. The record clearly shows that Audrey Cilurzo's proposal to integrate into full-time day-to-day management is credible and trustworthy. She has actively participated in the prosecution of the AAB application and has demonstrated that she is able to run a business.

122. Audrey Cilurzo's integration proposal is enhanced by her residence in Temecula since 1969, by her substantial civic involvement, and by her past broadcast experience as secretary and member of the Board of Directors of Valley Public Radio, Inc., former licensee of noncommercial educational station KRTM, licensed to Temecula, California. She was also actively involved in KRTM's operation from 1978 to 1981, acting as a liaison into the community, ascertaining Temecula's needs and setting up programs for school or youth organizations.

123. Audrey Cilurzo currently manages the Cilurzo Vineyard and Winery at Temecula, but has pledged to terminate this and any future employment prior to the initiation of program tests.

124. Stephen Cilurzo's integration proposal is enhanced by his residence in Temecula between 1969 and 1982, his civic involvement as a licensed amateur radio operator being an active member of the Amateur Radio Emergency Service, and his past broadcast experience.

125. Stephen Cilurzo currently manages a video production company in San Diego, but has pledged to terminate this and any other employment prior to the initiation of program tests.

126. AAB's proposal is also enhanced by its commitment to install auxiliary power.

Misrepresentation Issue - AAB

127. The Joint Petitioners (Kimler, Los Amigos and Avid) complained that Stephen Cilurzo lied when he testified at hearing in April, 1992 that he resigned as general manager at KRTM when he left town in mid-August in 1982; that he lied saying the station was on the air when he left the station; that he lied saying that the station was taken off the air some two weeks to 30 days after he left the station and that he lied when he said that he did not anticipate that the station would be taken off the air after he left town.

128. A review of the record indicates that these charges are baseless. In the pleading seeking the instant misrepresentation issue against AAB the record was mischaracterized to indicate that Stephen Cilurzo testified that he tendered his resignation as general manager as he left for his out-of-town job. Fact of the matter is that Stephen Cilurzo testified that he was not certain as to when he tendered his resignation, that the incident having taken place some ten years beforehand, he couldn't recall whether it was before or after he left town that he tendered his resignation. It is clear that Stephen Cilurzo notified the Board in July of 1982 that he was looking for full-time employment elsewhere and that he notified the Board on or about August 11, 1982 that he accepted a job in the Pasadena area. He introduced Frank Cordell to the Board as a person who would handle day-to-day KRTM broadcast operations. At this meeting an arrangement was worked out that Cordell would live in Stephen's house where the studio and studio equipment was located and receive a small salary and commission on sponsorships obtained. The Board also agreed to pay Stephen Cilurzo's mortgage payment after he left.

129. Some of Joint Petitioners witnesses protested that although they knew that Stephen Cilurzo left town for another job they did not understand him to be resigning as general manager. They did not explain how they expected Stephen Cilurzo to perform from 90 miles away his general manager's tasks since the job entailed going into the Temecula community, performing as on-air announcer, reading the news, soliciting sponsorships and overseeing day-to-day operations. It is apparent from a reading of the record that some of the initial recollections of the witnesses that the Joint Petitioners relied upon were incomplete, mistaken and even inaccurate.

130. The record shows that the KRTM station did not go off the air until some two weeks after Stephen Cilurzo left town. It also demonstrates that Stephen Cilurzo did not anticipate that the station would go dead. He explained how illogical and injurious to his financial interests it would have been to simply abandon operations without any regard to the consequences. Stephen Cilurzo's testimony is entirely credible and completely trustworthy being supported in so many respects by disinterested witnesses. On the other hand it is frankly admitted that two of the main witnesses who spoke in support of the specified misrepresentation issue, Harker and Maurice, gave testimony at times inconsistent with earlier statements they had made and with each other. In all, the testimonies of the witnesses in behalf of the proponents of the issue are deemed unreliable and the allegations of the proponents must be rejected, AAB having proven them to be unwarranted.

131. KRTM went dead because the electric company shut off the power for failure to pay the electric bill. Stephen Cilurzo was not advised of the shut down. At hearing he testified what steps could have been taken by the Board to

restore power. The failure to restore power and even the shut down must rest on the Board's shoulders and cannot be attributed to Stephen Cilurzo. In light of the foregoing, the misrepresentation issue specified against AAB IS RESOLVED in its favor.

Laura Wilkinson Herron

132. *Diversification.* Herron has pledged to divest herself of all media interests she has.

133. *Integration.* Herron is credited with 100% integration on her pledge to work full-time as general manager. Her proposal is enhanced by her pledge to relocate her residence to Temecula, California, her past broadcast experience and her commitment to install auxiliary power.

Avid Communications Inc.

134. *Diversification.* Fakas, sole stockholder of Avid, is sole stockholder of the licensee of Station KLUA(FM), Kailua-Kona, Hawaii, but he is committed to divest himself of this interest.

135. *Integration.* Fakas will serve as general manager on a full-time basis and Avid is entitled to 100% integration credit. Although Fakas intends to relocate his residence to meet his commitment to the station, he has not specified to what portion of the service area he will move. Fakas' proposal is enhanced by his past broadcast experience. Avid has not proposed to install auxiliary power.

Natalie Lederer Rogers

136. *Diversification.* Rogers has no attributable media interests.

137. *Integration.* She is credited with 100% integration and her proposal is enhanced by her promise to relocate to Temecula. She also proposes to install auxiliary power.

Comparative Coverage

138. Spain, Los Amigos and Rogers amended their technical proposals because the *HDO* directed them to eliminate a short spacing between their proposals and Stations KIKF-FM and/or KTWV-FM. *See HDO*, ¶ ¶ 5-11 and 30. Consequently, these amendments were filed long after the date for filing amendments as a matter of right. *See HDO*, ¶24.

139. In *Newton Television, Ltd.*, 5 FCC Rcd 2755, 2756 (1990), the Commission, *citing Women's Broadcasting Coalition, Inc.*, 59 RR 2d 730 (1986), held that applicants cannot improve their comparative standing even when loss of a transmitter site was involuntary. In *Sarasota-Charlotte Broadcasting Corporation*, 6 FCC Rcd 1665, 1666 (1991), the Commission stated that while applicants can maintain service proposals by post-cut-off date amendments, they must bear the burden of reduced service where post-cut-off date amendments propose less service than that specified as of the cut-off date. Thus, despite the fact that Spain, Los Amigos and Rogers submitted their amendments pursuant to a Commission directive, those applicants cannot improve their coverage proposals as they existed as of the cut-off date, and they must suffer the consequences of any downgrading that occurs. Accordingly, for comparative analysis, the appropriate proposals for Spain and Los Amigos are their original proposals, while for Rogers, it is her amended proposal.

140. Where the areas and populations within the applicants' proposed coverage areas are already well-served, the Commission has awarded a slight coverage preference only to those applicants proposing substantially greater overall coverage than their competitors. *See, Simon Geller*, 90 FCC 2d 250, 268-69, 276 (1982), where a slight preference was awarded to an applicant proposing to serve four time more area and 315,000 more people than its competitor. For less significant differences, a very slight preference has been awarded. *See, e.g., Barton Broadcasting Co.*, 104 FCC 2d 785, 791 (Rev. Bd. 1986), where a very slight preference awarded to an applicant proposing to serve 44, 215 or 27% more people. Where the differences are insignificant, no preference is awarded. *See Metro Broadcasting*, 99 FCC 2d 688, 699 (1989).

141. Here, Spain proposes to serve the greatest number of people. Spain's advantages over the other applicants except Artistic -- Rogers (24,160 persons or 13%), Kimler (29,706 persons or 17%), Herron (32,549 persons or 19%), Avid (33,455 persons or 19%), Los Amigos (57,932 persons or 39%) -- warrant giving Spain a very slight preference to these applicants. The difference between Spain and Artistic (84,608 persons or 69%) is sufficiently great to warrant giving Spain a slight preference as to Artistic. Rogers, the next best applicant, merits no preference vis-a-vis Kimler (5,546 persons or 3%), Herron (8,389 person or 5%), or Avid (9,295 persons or 5%). However, Rogers merits a very slight preference vis-a-vis Los Amigos (33,772 persons or 23%) and Artistic (60,448 persons or 50%). Similarly, the differences among Kimler, Herron and Avid are insufficient to warrant giving any preference vis-a-vis each other; however, each of them merits a very slight preference in comparison with Los Amigos and Artistic. Finally, the difference between Los Amigos and Artistic is sufficient (26,676 persons or 22%) to warrant giving Los Amigos a very slight preference over Artistic.

Ultimate Conclusions

142. On the question of diversification only Spain is assessed a moderate to substantial demerit for its media holdings.

143. On the question of integration into management:

1. Spain's claim to integration credit has been rejected.

2. Los Amigos is credited with 100% integration, enhanced by 100% minority ownership, enhanced slightly by Ms. Gutierrez's civic involvement, enhanced very slightly by her past broadcast experience.

3. Kimler is credited with 100% integration enhanced by 3 years full-time and 3 years part-time residence in the service area, enhanced slightly by civic involvement and moderately by past broadcast experience.

4. AAB is credited with 100% integration enhanced by long-term residence in the city of licensee; enhanced by Audrey Cilurzo's (60%) substantial civic involvement and Stephen Cilurzo's (40%) slight civic involvement and by Stephen's substantial broadcast experience and Audrey Cilurzo's slight to moderate broadcast experience.

5. Herron is credited with 100% integration and her substantial broadcast experience.

6. Avid is credited with 100% integration.

7. Rogers is credited with 100% integration.

144. On the question of auxiliary power, only Avid does not propose to install auxiliary power.

145. On the question of comparative coverage, Spain receives a slight preference over all. Rogers, Kimler, Herron and Avid are even with each other and receive individual and very slight preference over Los Amigos and AAB and Los Amigos receives a very slight preference over AAB.

146. In sum, weighing all of the comparative factors, AAB is clearly the strongest applicant. AAB is best qualified to be a Commission licensee. In order of strength of qualification, AAB is followed by Los Amigos and then Kimler.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of Artistic Airwave Broadcasters (File No. BPH-900122MP) IS GRANTED and the applications of Frank K. Spain (File No. BPH-900119MN); Los Amigos Media (File BPH-900122MM); Kimler Broadcasting, Inc. (File No. BPH-900122MN); Laura Wilkinson Herron (File No. BPH-900122MY); Avid Communications, Inc. (File No. BPH-900122NF); and Natalie Lederer Rogers (File No. BPH-900122NN) ARE DENIED.[6]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

[6] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services
for the Provision of Communications
by Authorized Common Carriers
between the Contiguous States
and Alaska, Hawaii, Puerto Rico
and the Virgin Islands

ORDER

Adopted: July 9, 1993; Released: July 9, 1993

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. On June 28, 1993, Alascom, Inc. (Alascom) filed a motion (Alascom Motion) seeking to establish a reply comment period two weeks after July 12, 1993, the reply comment period established in the *Tentative Recommendation* in this proceeding.[1] Alascom contends that the Alaska Joint Board established a new comment date of July 12, 1993, in place of the *Tentative Recommendation* comment date of June 28, 1993, in the *Public Hearing Notice*[2] announcing the Alaska Joint Board convening of a public hearing in Anchorage, Alaska on July 1, 1993 (public hearing).[3] In view of this, Alascom requests that a new date be established for reply comments, two weeks after July 12, 1993.[4]

2. General Communication, Inc. (GCI) opposes Alascom's request. GCI notes that Alascom did not file comments on the due date established in the *Tentative Recommendation* and argues that Alascom seeks to extend the pleading cycle. GCI states that the Joint Board's provision of an opportunity for public comment provides no basis for extending the pleading cycle for the *Tentative Recommendation*.[5] In reply, Alascom cites the State of Hawaii's comments in this proceeding indicating concern that the record of the hearing will not be available for review before the filing date for reply comments of July 12, 1993.[6]

3. We deny Alascom's motion. The provision in the *Public Hearing Notice* for interested persons to file written testimony or other comments on July 12, 1993, did not modify the dates established in the *Tentative Recommendation* for parties in the proceeding to file formal written comments and reply comments. The public hearing was held as a supplement to the formal pleading cycle for written comments by the parties to this long proceeding. The public hearing gave the citizens of Alaska an opportunity to testify about their reactions to the *Tentative Recommendation* and documents filed in this proceeding. In order to accommodate those citizens unable to testify in person at the July 1 public hearing, the *Public Hearing Notice* set a follow-on date for them to submit written testimony for the record. The *Tentative Recommendation* set a reasonable pleading cycle for the completion of a formal written record in a timely manner, and Alascom has provided no persuasive reason for extending that cycle.

4. We do conclude, however, in light of the importance of the issues presented in this proceeding, that we should provide an opportunity for the parties to file written responses to the public hearing testimony, both oral and written, in order to complete the public hearing record. We conclude that a period of ten days is sufficient for parties to prepare any such responses. Therefore, we provide that parties may file written responses by July 22, 1993, to the oral and written testimony presented as part of the public hearing convened by the *Public Hearing Notice*. This will provide a complete record upon the basis of which the Joint Board can establish an expeditious resolution of issues in this proceeding and a final recommendation to the Commission.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (j) and 155 (c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of Alascom for extension of time is DENIED.

6. The deadline for filing reply comments in response to the written testimony and comments placed in the record in response to the hearing and *Public Hearing Notice* is July 22, 1993.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Chief, Policy and Program Planning Division
Common Carrier Bureau

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[1] Tentative Recommendation and Order Inviting Comments, FCC 93J-1 (released May 17, 1993) (*Tentative Recommendation*). The *Tentative Recommendation* established the comment date of June 28, 1993, and a reply comment date of July 12, 1993.

[2] Alaska Federal-State Joint Board to Convene a Hearing in Anchorage Alaska on Thursday, July 1, 1993, CC Docket No. 83-1376, (released June 23, 1993) (*Public Notice*).

[3] Alascom Motion at 1-2.

[4] Alascom states that it plans to file its comments in the proceeding on July 12, 1993. Alascom states that the additional time will give it an opportunity to review the record of the July 1, 1993 hearing.

[5] General Communication, Inc., Opposition to Alascom's Motion to Schedule Reply Comments, June 29, 1993. GCI contends that Alascom's request is actually an untimely request to extend the date for filing in this proceeding and that Alascom's request is in violation of the Commission's Rules, Section 1.46(c), because parties filing for extensions less than seven days before the due date must notify other parties, and Alascom and Commission staff were not notified. We reject GCI's claim because Alascom's Motion was filed more than seven days before the filing due date of July 12, 1993, and Section 1.46(c) applies to other than notice and comment rulemakings.

[6] Alascom Reply to Opposition, June 30, 1993, *citing* State of Hawaii Comments at 10.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Station Identification for
Part 90 Wireless Microphone Use

ORDER

Adopted: July 1, 1993; Released: July 19, 1993

By the Commission:

1. Section 90.265(b) of the Commission's Rules, 47 C.F.R. § 90.265(b), designates eight frequencies in the 169-172 MHz band exclusively for wireless microphone use with a maximum permissible transmitter output power of 50 milliwatts. At this power level, the operating range of wireless microphones is generally less than 300 feet.

2. Section 90.425 of the Rules, 47 C.F.R. § 90.425, requires a station to identify itself by transmitting its call sign by either voice or Morse code every 15 minutes. The primary purpose for station identification is to assist in locating stations during interference investigations. However, because of the relatively short operating range of wireless microphones and the availability of eight operating frequencies, interference to other licensed users from very low powered wireless microphones is highly unlikely. Should interference occur, it would be relatively easy to locate an interfering station because of the short distances involved.

3. Aside from our conclusion that station identification serves no useful purpose in the context of such low-power, short-range operations, we observe that because wireless microphones are typically used in settings such as lecture halls, auditoriums and theaters, frequent interruptions for station identification is disruptive. Further, we note that the use of wireless microphones in the 174-216 MHz frequency band for very similar purposes, pursuant to the Commission's Rules for Low-Power Auxiliary Stations (Part 74, Subpart H), is also limited to 50 milliwatts transmitter power and is exempt from station identification.

4. We conclude, therefore, that because of the low-power, short operating distance, and typical use of wireless microphones, station identification for wireless microphone operations pursuant to Section 90.265(b) is unnecessary and burdensome. By this *Order*, we amend Section 90.425(d) to exempt such wireless microphone operations from station identification.

5. Because the eight frequencies involved are shared with the Government, this action has been coordinated with the Government through the Interdepartmental Radio Advisory Committee.

6. This rule change is considered non-controversial and a matter in which the public is not likely to be interested. We, therefore, find good cause to conclude that notice and comment are unnecessary and contrary to the public interest. *See* 5 U.S.C. § 553(b)(A) and (B).

7. Accordingly, IT IS ORDERED that, effective 30 days after publication in the Federal Register, Section 90.425(d) of the Commission's Rules, 47 C.F.R. § 90.425(d), IS AMENDED in accordance with the Appendix below.

8. For further information, contact Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, telephone (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 90 - Private land mobile radio services

1. The authority citation for Part 90 continues to read:

AUTHORITY: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. § 154, 303, and 332, unless otherwise noted.

2. Section 90.425 is amended by adding paragraph (d)(9) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(9) It is a wireless microphone station operating in accordance with the provisions of § 90.265(b).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-131

In the Matter of

Missouri Public Safety Plan

ORDER

Adopted: July 12, 1993; Released: July 19, 1993

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 27, 1993, Region 24 (Missouri) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Missouri.

2. The Missouri Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Missouri and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Missouri.

4. Therefore, we accept the Missouri Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in Missouri may commence immediately.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-130

In the Matter of

Minnesota Public Safety Plan

ORDER

Adopted: July 12, 1993; Released: July 19, 1993

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 14, 1993, Region 22 (Minnesota) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Minnesota.

2. The Minnesota Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Minnesota and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Minnesota.

4. Therefore, we accept the Minnesota Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in Minnesota may commence immediately.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-205

In the Matter of

Amendment of Section 73.202(b), RM-8270
Table of Allotments,
FM Broadcast Stations.
(Donalsonville, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 24, 1993; Released: July 19, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Seminole-Decatur Radio Company ("petitioner"), seeking the allotment of Channel 298A to Donalsonville, Georgia, as that community's second local FM service.[1] Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 298A to Donalsonville, Georgia, as that community's second local FM service. Channel 298A can be allotted to Donalsonville in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.3 kilometers (3.9 miles) south of the community.[2]

3. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Donalsonville, Georgia	292A	292A, 298A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jerry E. White
Seminole-Decatur Radio Company
Route 3, Box 514
Pelham, Georgia 31779
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Although Petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

[2] The coordinates for Channel 298A at Donalsonville are North Latitude 30-59-11 and West Longitude 84-52-34.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* Ali filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-196

In the Matter of

Amendment of Section 73.202(b), RM-8275
Table of Allotments,
FM Broadcast Stations.
(Point Arena, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 22, 1993; Released: July 19, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Del Mar Trust ("petitioner") requesting the allotment of Channel 272B1 to Point Arena, California, as that community's first local aural transmission service. Petitioner stated its intention to apply for Channel 272B1 if it is allotted to Point Arena, as requested.

2. We believe the public interest would be served by proposing the allotment of Channel 272B1 to Point Arena, California, since it could provide the community with its first local aural transmission service. Channel 272B1 can be allotted to Point Arena in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[1]

3. Accordingly, we believe it is appropriate to seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Point Arena, California	–	272B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Ashton R. Hardy, Esq.
Marjorie R. Esman, Esq.
Hardy & Carey
111 Veterans Memorial Blvd.
Suite 255
Metairie, LA 70005

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND

[1] Coordinates used for Channel 272B1 are 38-54-42 and 123-41-24.

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-195

In the Matter of

Amendment of Section 73.202(b), RM-8274
Table of Allotments,
FM Broadcast Stations.
(Los Molinos, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 22, 1993; Released: July 19, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Brett E. Miller ("petitioner") requesting the allotment of Channel 269A to Los Molinos, California, as that community's first local aural transmission service. Petitioner stated his intention to apply for Channel 269A if it is allotted to Los Molinos, as requested.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 269A to Los Molinos, California, since it could provide the community with its first local aural transmission service. Channel 269A can be allotted to Los Molinos in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.[2]

3. Accordingly, we believe it is appropriate to seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Los Molinos, California	--	269A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Brett E. Miller
11608 Blossomwood Ct.
Moorpark, CA 93021

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Although petitioner's request was signed and his address provided, he did not provide an affidavit verifying that the statements contained in the petition are accurate to the best of his knowledge. While a petitioner may seek assistance in the preparation of a pleading or petition for rule making, Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the commenting or petitioning party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes,* 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

[2] Coordinates used for Channel 269A are 40-01-12 and 122-05-42.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-194

In the Matter of

Amendment of Section 73.202(b), RM-8255
Table of Allotments,
FM Broadcast Stations.
(Esparto, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 22, 1993; Released: July 19, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Esparto Broadcasting ("petitioner") seeking the allotment of FM Channel 250A to Esparto, California, as its first local aural transmission service. Petitioner stated its intention to apply for Channel 250A if it is allotted to Esparto, as requested.

2. In support of the proposal, petitioner states that Esparto is listed as a Census Designated Place by the Census Bureau, which attributes that locality with a population of 1,487 in the 1990 U.S. Census.

3. A staff review of the proposal indicates that Channel 250A can be allotted to Esparto in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 12.5 kilometers (7.8 miles) northeast[1] of that locality to avoid short-spacing to the construction permit issued for Station KMGG(FM), Channel 249B1, Monte Rio, California,[2] and to Station KABL-FM, Channel 251B, San Francisco, California.[3]

4. We believe the public interest would be served by proposing the allotment of Channel 250A to Esparto, California, since an interest has been expressed in providing a first local aural transmission service at that location. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Esparto, as follows:

	Channel No.	
City	Present	Proposed
Esparto, California	--	250A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Riley M. Murphy, Esq.
Energy Centre
1100 Poydras
Suite 2590
New Orleans, LA 70163-2590

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] Coordinates used for Channel 250A at Esparto are 38-45-10 and 121-53-30.
[2] Coordinates at the authorized site for Station KMMG(FM) are 38-32-23 and 122-57-37.
[3] Coordinates at the licensed site for Station KABL-FM are 37-51-04 and 122-29-49.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-200

In the Matter of

Amendment of Section 73.202(b), RM-8254
Table of Allotments,
FM Broadcast Stations.
(Micco, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 23, 1993; Released: July 19, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Micco Broadcasting ("petitioner"), seeking the allotment of Channel 240C3 to Micco, Florida, as that community's first local aural service. Petitioner states its intention to apply for the channel, if allotted.

2. Petitioner states that Micco is a census designated place ("CDP") with a 1990 U.S. Census population of 8,757 persons. However, Micco is listed in the *1993 Rand McNally Commercial Atlas* ("*Atlas*") and attributed with a population of 900 which is not designated as an official U.S. Census figure. According to the *Atlas* Micco is listed as a CDP with a 1990 U.S. Census population of 8,757 and includes areas within the separate communities of Micco, Barefoot Bay and Little Hollywood, Florida, which are all unincorporated communities. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census that is sufficient to demonstrate its status as a community for allotment purposes. However, the Commission has found that even though an area is listed as a CDP, it is not necessarily a community for allotment purposes. Since the *Atlas* listing for Micco is ambiguous as to its census designation, petitioner should present the Commission with further information to demonstrate that Micco has social, economic, cultural, and government indicia to qualify it as a "community" for allotment purposes.[1]

3. We believe the public interest would be served by proposing the allotment of Channel 240C3 to Micco, Florida, as that community's first local aural service. Channel 240C3 can be allotted to Micco in compliance with the Commission's minimum distance separation requirements of the Commission's Rules without a site restriction.[2]

4. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Micco, Florida	–	240C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Riley M. Murphy
1100 Poydras Street, Suite 2590
New Orleans, LA 70163-2590
(Attorney for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a

[1] *See, e.g., Gretna, et. al., FL,* 6 FCC Rcd 633 (1991); *Oak Grove, FL,* 5 FCC Rcd 3774 (1990); *Statenville, GA,* 5 FCC Rcd 2685 (1990); and *East Hemet, et. al., CA,* 4 FCC Rcd 7895 (1989).
[2] The coordinates for Channel 240C3 at Micco are North Latitude 27-52-49 and West Longitude 80-30-02.

request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

National Exchange
Carrier Association, Inc.

Proposed Modifications to the
Interstate Average Schedules

MEMORANDUM OPINION AND ORDER

Adopted: June 16, 1993; Released: June 28, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This order approves modifications to the average schedule formulas proposed by the National Exchange Carrier Association, Inc. ("NECA") on December 31, 1992. The modifications proposed by NECA will be effective on July 1, 1993.

2. Section 69.606(b) of the Commission's rules requires NECA's Board of Directors to propose annual revisions to the average schedules or certify that no revisions are warranted.[1] Section 69.606(a) states that no disbursements shall be made by NECA to average schedule companies without Commission approval.[2] On December 31, 1992, NECA filed proposed modifications to the average schedule formulas that it stated would increase average schedule settlements by an average of 2.95%[3]

3. NECA, NTCA, OPASTCO, USTA, and ICORE support approval of NECA's proposed modifications. While generally urging approval of NECA's proposed modifications, however, ICORE contends that the SP/SSP,[4] intertoll switching, and line haul formulas should not be reduced; and that a maintenance factor should be added to the equal access investment carrying charge.[5] MCI argues that NECA's average schedule company cost data and Dial Equipment Minutes ("DEM") calculations are suspect, and that NECA's average schedule formulas are fundamentally flawed because they do not provide a mechanism for correction of overearnings.[6] For the reasons that are discussed below, we find that neither ICORE nor MCI have provided an adequate basis for rejecting or modifying the revisions to the average schedule formulas that have been proposed by NECA's Board of Directors.

II. COMMENTS/DISCUSSION

A. ICORE

4. ICORE objects that the modifications NECA proposes will result in reductions in several average schedule formulas. ICORE first contends that no reduction in the SP/SSP formula should be made, arguing that a different weighting of switch investments should be employed -- specifically that a greater proportion of larger, higher-cost switches should be used to calculate the interstate revenue requirement associated with each SP or SP/SSP installation.[7] In response, NECA states that its proposed SP/SSP formula accurately reflects the planned deployment of SP/SSP SS7 equipment in over 296 switches by 1994 as revealed in survey data.[8]

5. By using survey data on planned installations of SP/SSPs, NECA correctly reduced the emphasis that had been accorded to large switch installations in the earlier SP/SSP formula.[9] As a consequence, NECA correctly utilized a lower average investment figure that recognizes the fact that during the period these average schedules will be in effect, most average schedule companies will be installing SP and SSP software in smaller switches with corresponding reductions in interstate revenue requirements.[10]

6. ICORE also requests that the intertoll switching and line haul formulas be frozen at 1992 levels because there "is simply too much going on in the Intertoll Switch/Line Haul arena to change formula levels without instituting

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[1] 47 C.F.R. § 69.606(b).

[2] 47 C.F.R. § 69.606(a).

[3] Average schedule companies are receiving compensation pursuant to formulas that became effective July 1, 1992. Memorandum Opinion and Order, In the Matter of NECA Proposed Modifications to the Interstate Average Schedules, 7 FCC Rcd 4182 (1992). Comments on NECA's proposed modifications were filed by ICORE, Inc. (a consulting firm), MCI Communications Corporation ("MCI"), the National Telephone Cooperative Association ("NTCA"), the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), and the United States Telephone Association ("USTA"). Reply comments were filed by ICORE, NECA, NTCA, and USTA.

[4] "SP" and "SSP" are abbreviations for a Signaling System 7 Signalling Point ("SP") and a Signalling System 7 Service Switching Point ("SSP"). NECA Proposed Modification of Average Schedules (Dec. 31, 1992) at VII-19.

[5] ICORE comments at 4-12. ICORE also suggests that cost study companies with fewer than 10,000 access lines should be permitted to elect average schedule status. *Id.* at 14-15. Changing the definition of companies eligible for average schedule status to those companies with fewer than 10,000 access lines would require a separate rulemaking proceeding, and accordingly cannot be considered as part of this compliance proceeding. *See generally* 1992 Average Schedule Order, 7 FCC Rcd at 4183, ¶ 15 (the appropriate vehicle for persons seeking to modify a Commission rule is a petition for rulemaking). Second, while recognizing that USF compensation for average schedule companies is not part of this proceeding (ICORE comments at 13), ICORE suggests that NECA be directed to undertake further studies of the relationship between USF costs and density and/or loop length. We decline to adopt this suggestion because there is no evidence that further study is warranted. Finally, with respect to ICORE's suggestion that cost company financial data should be used with average schedule company financial data in future average schedule filings, we find that ICORE's suggestion is inconsistent with Section 69.606(a) of the Commission's rules, 47 C.F.R. § 69.606(a), and accordingly cannot be considered here.

[6] MCI comments at 2-9.

[7] ICORE comments at 7-8.

[8] NECA reply at 13-14; NECA Proposed Modification of Average Schedules (Dec. 31, 1992) at VII-20 to VII-21.

[9] *See generally id.* and NECA Modification of Average Schedules (filed Dec. 31, 1992) at VII-20 to VII-25.

[10] *See* NECA reply at 13-14 and references cited therein; ICORE reply at 7; NECA Proposed Modification of Average Schedules (filed Dec. 31, 1992) at VII-22 to VII-23.

corresponding structural and procedural changes."[11] ICORE does not propose a better formula, nor does ICORE show any methodological infirmity in NECA's development of the line haul and intertoll formulas. We thus conclude that ICORE has not demonstrated that freezing the intertoll switching and line haul formulas at 1992 levels would provide more accurate settlements to average schedule companies.

7. ICORE also proposes that the equal access formula include a component for maintenance.[12] In response, NECA states that ICORE's proposal would violate Commission rules for recovery of equal access costs, which limit equal access reimbursement to initial incremental cost.[13] Because maintenance is an ongoing cost, maintenance outlays would not qualify for equal access reimbursement under the Commission's rules. As a consequence, NECA has correctly excluded maintenance from the equal access formula.

B. MCI Communications Corporation

1. Methodological Concerns

8. MCI questions NECA's DEM growth calculation and average schedule company cost data. Citing data provided by NECA to Federal-State Joint Board staff,[14] MCI asserts that NECA's rate of growth of interstate DEM for average schedule companies is too high and that NECA's forecasting model is "relatively naive."[15] In response, NECA states that the network usage reports to the Federal-State Joint Board staff cited by MCI consisted only of DEM estimates for the total average schedule population. NECA further states that these DEM estimates were provided by NECA "to enable the Commission to monitor cost company DEM data, while maintaining a view of the total industry that includes average schedule levels."[16] NECA states that it did not use those data in its average schedule studies.[17] NECA further explains that actual DEM can only be derived from traffic studies conducted by cost companies as part of cost separations studies, and that because actual DEM data are not available from average schedule companies, it is necessary to model DEM growth rates for average schedule companies, using established econometric techniques.[18]

9. We conclude that NECA's explanation is adequate to show that its methodology is reasonable, and that MCI has not raised an issue that warrants further investigation in this proceeding. MCI's identification of a possible mismatch between two NECA filings raises a more general concern, however. It is our view that NECA filings should in all respects be sufficiently clear and complete that the public can readily comprehend what NECA has done, and how it has done it. An improvement in the adequacy of NECA's explanations, particularly in cases where it has used a variety of methodologies, would avoid the expenditure of unnecessary time and effort by parties and by the Bureau in the future.

10. MCI also asserts that NECA has submitted inconsistent data for average schedule companies.[19] In response, NECA states:

> [h]ere MCI confuses data collected from one sample of companies in 1990 (Appendix G2) with data collected from a different sample of companies in 1991 (Appendix C1). MCI points out that data from these two sets of data did not match. This is hardly surprising, since the data sets pertain to different companies. A comparison of 1991 sample data in the 1992 filing (Appendix G2 of the 1992 filing) with data from the same sample listed in Appendix B2 of the 1991 filing shows that the data are consistent in both filings.[20]

In other words, NECA contends that MCI has mistakenly assumed that two sets of data, collected from two different samples of companies, should be identical.[21] After reviewing the data that are contained in NECA's filings, we have concluded that NECA is correct and MCI's concern in this regard is without foundation.[22]

11. MCI further states that in calculating growth ratios for average schedule companies, NECA adjusted total company account data to remove non-regulated costs.[23] MCI alleges that NECA made no effort to adjust those data for the expiration of the amortization of those companies' investments in inside wiring.[24] NECA states in response that the inside wiring investment had already been removed (citing exchange carrier reporting requirements and reported values).[25] From the information that is before us, it appears that no further adjustment is necessary and that the basis for MCI's concern in this regard is unsubstantiated.

12. MCI also questions "the integrity of the cost data provided for the LEC denoted as study area 1175," noting that the data appear to be estimated amounts rather than actual amounts.[26] In response, NECA states that MCI is correct, that the cost data were estimated, and that NECA excluded those data in the development of the average schedule formulas.[27] Given that the data for study area 1175 were excluded from formula development, we conclude that MCI's concern about the estimation of data for study area 1175 is moot.

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[11] ICORE comments at 9.
[12] *Id.* at 10.
[13] NECA reply at 15.
[14] MCI comments at 5, citing *Monitoring Report in CC Docket No. 87-339* (prepared by the Staff of the Federal-State Joint Board in CC Docket No. 80-286, July, 1992) at Tables 4.9 to 4.12. Those tables, contain numbers for the periods 1987-1990 supplied by NECA for: local dial equipment minutes, state dial equipment minutes, interstate dial equipment minutes, and total dial equipment minutes.
[15] *Id.* at 4-5, Exhibits 1 and 2.
[16] NECA reply at n.31.
[17] *Id.*
[18] *Id.* at 9-11.
[19] MCI comments at 7-8, Appendix 2.
[20] NECA reply at 12.
[21] *Id.*
[22] *See* NECA Modification of Average Schedules (filed Dec. 31, 1992) at Appendices C-1 (sample data for 1989 and 1990), G-2 (sample data for 1988 and 1989); NECA reply at 12.
[23] MCI comments at 6-7.
[24] *Id.* at 5.
[25] NECA reply at 11.
[26] MCI comments at 8-9.
[27] NECA reply at 12. *See also* 1993 NECA Modification of Average Schedules (filed Dec. 31, 1992) at V-3, Exhibit 5.1 (exclusion of the estimated data that were of concern to MCI).

2. Overearnings

13. MCI states that it continues to be concerned with a "fundamental flaw" with the proposed average schedules -- that nowhere within the formulas is there any mechanism that would recognize overearnings by any of the average schedule companies, and correct for that situation.[28] MCI argues that some average schedule companies may have "excessive earnings," and states that this argument is based upon a comparison of data provided by LECs to USTA with data that NECA submitted as part of the Universal Service Fund ("USF") program.[29] For 1991, MCI tabulated unseparated (*i.e.,* total) income and balance sheet data from the USTA reporting companies into two classes: (i) all LECs that reported to USTA; and (ii) all average schedule LECs that reported to USTA. MCI then calculated ratios for average schedule companies, and for all LECs that reported to USTA, for: net income/access line, net income/telephone plant in service, access revenues/total revenues. In each case, the value of the computed ratio was higher for average schedule companies than it was for all LECs that reported to USTA. Based on this comparison, MCI argues that it is possible that these average schedule companies are overcompensated for access by the average schedule formulas.[30]

14. In response, ICORE states that since the average schedule formulas use the same authorized rate of return that is used by cost companies, the formulas in total should produce revenue requirements very similar to those of corresponding cost companies. ICORE argues that to determine on an individual company basis whether a company is "overearning," would require a cost study of each company that "would defeat the whole purpose of the schedules."[31] NTCA states that MCI has failed to show that any method employed by NECA is unsound and, consequently, that MCI has provided no basis for concluding that the interstate average schedule formulas overcompensate average schedule companies.[32] USTA states that the data referenced by MCI include data from the largest exchange carriers (*e.g.,* the Bell Operating Companies), which generally have lower cost characteristics than the smaller companies, including average schedule companies.[33]

15. MCI's concern in this proceeding about average schedule companies' overearnings is misplaced, and its analytical comparisons are not probative. First, in the context of this proceeding, MCI's concern about excessive earnings by average schedule companies is procedurally misplaced. This compliance proceeding is concerned with determining whether NECA's proposed revisions to the average schedule formulas comply with the Commission's rules. As a consequence, the average schedule formulas are reviewed from the perspective of determining whether compensation from the *interstate* jurisdiction corresponds to the requirement contained in Section 69.606(a) of the Commission's rules.[34] NECA's proposed modifications to the average schedule formulas are examined from that perspective. Total company earnings, which may include revenues from intrastate access, CATV operations, the provision of cellular telephone service, inside wiring, and CPE are irrelevant to our review of the interstate average schedule formulas.

16. Second, the USTA data that MCI cites constitute neither a census, nor a valid random sample, of unseparated average schedule company financial data or unseparated financial data for the local exchange carrier telephone industry as a whole. The USTA data, referenced by MCI, are supplied by local exchange carriers that elect to provide selected data to the United States Telephone Association.[35] Those data are, therefore, neither comprehensive nor complete. Moreover, those data are not audited by USTA or the FCC and, as noted above, are supplied wholly on a voluntary basis by companies that choose to provide data to USTA. Simply put, the USTA data employed by MCI are not directly comparable in this context.

17. Finally, under the assumption, *arguendo,* that MCI's concern extends only to the possibility that individual average schedule companies might "overearn" in the interstate jurisdiction, we note that such a determination, on an individual company basis, would require an interstate cost study of each average schedule company. As ICORE, USTA, and NTCA note, such a cost study requirement would be inconsistent with the purpose of having interstate average schedule formulas.[36]

III. CONCLUSION AND ORDERING CLAUSES

18. We conclude that NECA's proposed modifications to the average schedule formulas are consistent with applicable Commission rules.

19. As a consequence, IT IS ORDERED that NECA's December 31, 1992 proposed modifications to the interstate average schedule formulas ARE APPROVED with an effective date of July 1, 1993.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

[28] MCI comments at 2.
[29] *Id.* at 2-3.
[30] *Id.* at 3-4.
[31] ICORE reply at 5.
[32] NTCA reply at 3.
[33] USTA reply at 4.
[34] 47 C.F.R. § 69.606(a).
[35] USTA reply at 4.
[36] ICORE reply at 5, USTA reply at 2, NTCA reply at 3-5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BellSouth Corporation	**CC Docket No. 90-623**
Notice and Petition	**CC Docket No. 88-2, Phase I**
for Removal of the Structural Separation Requirement and Waiver of Certain State Tariffing Requirements	

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993; **Released: July 14, 1993**

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 13, 1992, the BellSouth Corporation, on behalf of its telephone operating company, BellSouth Telecommunications, Inc. (BellSouth), filed with the Commission a petition for structural relief pursuant to the *BOC Safeguards Order*.[1] In addition, BellSouth filed a request for waivers of the federal tariffing requirement for particular Open Network Architecture (ONA) services and the state tariffing requirement for certain ONA services in certain states. We find that BellSouth has justified waivers of the federal and state tariffing requirements for the services it identifies. We further find, in view of our grant of these waivers, that BellSouth has made the requisite showing for a grant of its petition for structural relief. Accordingly, we grant BellSouth's petition.

2. In the *BOC Safeguards Order*, the Commission concluded that Bell Operating Company (BOC) provision of enhanced services pursuant to nonstructural safeguards would serve the public interest, and established conditions for the removal of the structural separation requirement for BOC provision of enhanced services. Once a BOC concludes that it has met the requirements for structural separation, it must demonstrate that it: 1) has federal tariffs in effect for each of its initial interstate ONA services; 2) is technically prepared to offer each of its initial ONA services; and 3) has filed state tariffs for each of its initial ONA intrastate services.[2]

3. In its petition, BellSouth certifies that, provided that the Commission grants the requested waivers, it has taken all of the steps specified for initial ONA implementation.[3] It therefore petitions the Commission for removal of the structural separation requirement.

II. FEDERAL TARIFFING REQUIREMENTS

4. *Statistical Multiplexer.* BellSouth requests an indefinite waiver from the federal tariffing requirement for its Statistical Multiplexer service. BellSouth states that it had planned to introduce this service prior to July 1992 upon satisfaction of certain technical and market conditions. BellSouth further states that it has not been able to locate a suitable vendor for the Statistical Multiplexer. According to BellSouth, any vendor must be willing to disclose the proprietary protocols necessary for communication between central office statistical multiplexers and compatible equipment on customers' premises.[4] BellSouth states that it will continue to search for a suitable vendor to permit deployment of the Statistical Multiplexer capability.[5]

5. No party filed comments opposing BellSouth's request for a federal waiver for the Statistical Multiplexer. Therefore, to allow it to continue to search for a suitable vendor for the Statistical Multiplexer, we grant BellSouth a temporary waiver of the federal tariffing requirement for this service for a period of three years. If BellSouth is still unable to offer the Statistical Multiplexer at the end of the three-year period, it must reapply for a waiver.

6. *Monthly Detailed Recording.* BellSouth requests that the Commission waive the federal tariffing requirement for Monthly Detailed Recording. BellSouth states that the Monthly Detailed Recording capability is provided through Call Detail Information (CDI), which is available under contract in the interstate access environment through detariffed billing and collection services.[6] Because no party opposes BellSouth's request for a federal waiver, and the Monthly Detailed Recording capability is available through CDI, we grant BellSouth a waiver of the federal tariffing requirement for this service.

7. *Clear Access to Derived Channel.* BellSouth also requests a temporary waiver from the federal tariffing requirement for Clear Access to Derived Channel (Clear Access). BellSouth states that it has delayed filing access tariffs because the service has no utility to ESPs until the accompanying Data Over Voice (DOV) features are available in state tariffs.[7] BellSouth further states that state tariffs for DOV will be effective in the near future, and commits to file interstate access tariffs for Clear Access by September 30, 1993.[8] No party filed comments opposing BellSouth's request for a federal waiver for Clear Access. We grant BellSouth a temporary waiver of the federal tariffing requirement for this service until December 31, 1993 to allow time for the DOV tariffs to become effective.

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[1] Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order), pets. for recon. pending, pets. for rev. pending,* California v. FCC, No. 92-70083 (9th Cir. filed Feb. 14, 1992).

[2] *BOC Safeguards Order*, 6 FCC Rcd at 7624-7625, n.212.

[3] BellSouth Petition for Structural Relief at 1; *Ex Parte* Letter from Gary Hight, Director of Federal Regulatory, BellSouth to Donna Searcy, Secretary, FCC, May 12, 1993 at 1-5.

[4] *Id.* at 5.

[5] *Id.* at 5-6.

[6] Id. at 6. BellSouth states that CDI includes the calling telephone number, date, time of day, and call duration. *Id.*

[7] BellSouth states that the DOV features are complementary network services (CNSs).

[8] *Id.* at 7-8.

8. *Real Time Access and Pass Through Diagnostics.* BellSouth states that it plans to offer Real Time Access to Exchange Network Testing Facilities (Real Time Access) and Pass Through Diagnostics to User (Pass Through Diagnostics) through its Performance and Fault Management System (PFMS). BellSouth states that it will note in its federal tariffs that PFMS is available through an individual case basis (ICB) arrangement to any customer that requests it.[9] No party filed comments objecting to this arrangement for Real Time Access and Pass Through Diagnostics. We require BellSouth to indicate in its federal tariffs that PFMS is available through an ICB arrangement. If customer demand increases for the service, BellSouth must tariff the service.

III. STATE TARIFFING REQUIREMENTS

9. BellSouth seeks a waiver to delay offering one intrastate ONA service, Data Over Voice, in North Carolina until the end of the third quarter of 1993 to resolve internal operational concerns and tariff scheduling problems.[10] BellSouth also seeks a waiver of the state tariffing requirement for all states except Florida for Inhibit Third Number Call Billing to Direct Inward Dialing (DID), because it offers the service free of charge upon request to customers in all states in its region, except Florida.[11] In addition, BellSouth requests that the Commission waive the state tariffing requirement for Statistical Multiplexer and Clear Access services under the same conditions that BellSouth requested for their interstate equivalents. BellSouth states that it will offer both Real Time Access and Pass Through Diagnostics on an ICB basis.[12] Finally, BellSouth claims that, due to the lack of requisite general market demand, a few additional services in state jurisdictions are available only through an ICB arrangement.[13] BellSouth certifies that any customer in any of the states in its region can request any of these services, although some of the services may be offered through an ICB arrangement depending on location.[14]

10. We conclude that BellSouth has adequately demonstrated that a waiver is appropriate for the particular intrastate ONA services in the states it identifies, provided that BellSouth complies with the conditions to which it stipulated in its filing. BellSouth may refrain from tariffing Statistical Multiplexer for no more than three years, and may refrain from tariffing Clear Access until December 31, 1993.[15] We require that BellSouth clearly indicate in its state tariffs those intrastate ONA services available through ICB arrangements and that it file general tariffs for these services as soon as there is sufficient demand. With these conditions, we grant BellSouth a limited waiver of the state tariffing requirement of the *BOC Safeguards Order.*

IV. PETITION FOR STRUCTURAL RELIEF

11. MCI and the Newspaper Association of America (NAA) filed comments opposing removal of the structural separation requirement for BellSouth. MCI argues that the Commission should not grant structural relief while relying partly on the federal tariffs BellSouth filed for initial ONA services, because the federal tariffs do not properly implement ONA goals.[16] MCI also argues that the BOCs have made little progress in implementing ONA, and that the Commission must consider intrastate ONA problems in deciding whether to release BellSouth from structural separation requirements.[17]

12. NAA opposes BellSouth's petition, arguing that the three prerequisites to a grant of structural relief ignore the likely competitive harm from entry by the BOCs into the enhanced services marketplace on an integrated basis. Therefore, NAA argues, the Commission should not grant structural relief until the BOCs are prevented from exploiting their local exchange monopoly in the enhanced services marketplace.[18] NAA further argues that the Commission should refrain from granting the petition until the *BOC Safeguards Order* and the *BOC ONA Amendment Order* is reviewed by the courts.[19]

13. None of the commenters in this proceeding has set forth any new substantive reasons why BellSouth's petition should not be granted. Instead, the two commenters disagree with Commission policy on nonstructural safeguards and the effective implementation of ONA. In the *BOC Safeguards Order,* the *BOC ONA* proceeding, and the *Part 69/ONA Order,* the Commission addressed arguments about the appropriateness of lifting the structural separation requirement, the role of state tariffs in the ONA process, and the pricing of interstate ONA services.[20] This order merely implements the Commission's decision to substitute nonstructural safeguards for structural separation;[21] it is not the proper forum for parties to reargue the merits of that Commission decision.

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[9] BellSouth Petition for Waiver at 2-4.

[10] BellSouth Petition for Waiver at 11.

[11] *Id.* at 9-11. BellSouth states that Inhibit Third Number Call Billing to DID is a tariffed service in Florida. *Id.* at 10.

[12] *See* paras. 8 *supra.*

[13] *Id.* at 1-2, n.2; BellSouth Petition for Waiver at 8-9. BellSouth declares that because there is no demand in Mississippi for five interrelated ONA services, Uniform Access Number, Automatic Number Identification, Custom Service Areas, Call Detail Information (Monthly Detailed Recording capability), and Trunk Side Access, these services are available only through an ICB arrangement. BellSouth also declares that one intrastate ONA service, Derived Local Channel, will be available only through an ICB arrangement throughout its region due to lack of demand. BellSouth Petition for Waiver at 8-9. BellSouth further declares that these services will be provided under a general tariff offering if the requisite demand materializes. *Id.;* BellSouth Petition for Structural Relief at 1-2, n.2.

[14] *Id.*

[15] *See* para. 7 *supra.* In addition, if BellSouth seeks to charge customers in the future for Inhibit Third Number Call Billing to DID, it must tariff the service in each state in which it imposes a charge.

[16] MCI Comments at 2-4.

[17] *Id.* at 4-9.

[18] NAA Comments at 1-4. Both NAA and MCI cite as an example of the failure of ONA the Georgia Public Service Commission's finding that BellSouth engaged in anticompetitive conduct against enhanced services providers (ESPs) in introducing its MemoryCall voice mail service. NAA Comments at 3-4; MCI Comments at 4.

[19] *Id.* at 5-7.

[20] In the *BOC Safeguards Order,* the Commission specifically rejected arguments that the investigation by Georgia Public Service Commission into BellSouth's provision of MemoryCall showed that nonstructural safeguards were ineffective in preventing anticompetitive conduct. *BOC Safeguards Order,* 6 FCC Rcd at 7623, n.211.

[21] *See BOC Safeguards Order,* 6 FCC Rcd at 29-30, 44-55;

14. We therefore consider whether, in view of our grant of a waiver of the state tariffing requirement for several intrastate ONA services in certain states, BellSouth has made the requisite showing for structural relief. We conclude that it has. First, BellSouth certifies that it is technically prepared to offer each of its initial ONA services consistent with its ONA plan. Second, with our grant of a waiver for federal ONA services, BellSouth certifies that it has effective federal tariffs for these services. Finally, with our grant of a waiver for state ONA services, BellSouth has satisfied the requirement that it file state tariffs for its initial ONA services. In addition, we see no reason to take the unusual step of delaying our grant of BellSouth's petition, as suggested by NAA, until the courts have reviewed the *BOC Safeguards Order*. Accordingly, we grant BellSouth's petition.

15. BellSouth must continue to comply with the BOC ONA plan and reporting requirements established in the *BOC Safeguards* and *ONA* proceedings.[22] In the *BOC ONA Further Amendment Order* the Commission required that the BOCs file further amendments and annual reports on their progress in implementing ONA.[23] In addition, in the *BOC Safeguards Order*, the Commission stated that it would review nonstructural safeguards after all of the BOCs have operated under a full ONA environment for three years.[24] We grant BellSouth's petition subject to these ongoing ONA requirements.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, that pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. Sections 0.91 and 0.291, a waiver for BellSouth of the initial federal tariffing requirement for certain interstate ONA services IS GRANTED.

17. IT IS FURTHER ORDERED, that a waiver for BellSouth of the initial state tariffing requirement for certain intrastate ONA services in certain states IS GRANTED.

18. IT IS FURTHER ORDERED, that BellSouth's Petition for Removal of the Structural Separation Requirement IS GRANTED.

19. IT IS FURTHER ORDERED, that BellSouth's pending CEI plan modification for voice messaging services IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2 Phase I, 4 FCC Rcd 1, 162-171 (1988) (*BOC ONA Order), modified on reconsideration*, 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order)*, 5 FCC Rcd 3103, 3112-3113 (1990) (*BOC ONA Amendment Order), Erratum*, 5 FCC Rcd at 4045, *modified on reconsideration*, 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order), California v. FCC* No. 90-70336 (9th Cir. filed July 5, 1990); 6 FCC Rcd 7646, 7663-7664 (1991) (*BOC ONA Further Amendment Order), pet. for rev. pending, MCI Telecommunications Corp. v. FCC* No. 92-70189, (9th Cir. filed Feb. 19, 1992), 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment Order); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, CC Docket Nos. 89-79 and 87-313, 6 FCC Rcd 4524 (1991) (*Part 69/ONA Order), pets. for recon. pending.*

[22] BOCs are not required to file comparably efficient interconnection (CEI) plans for the provision of enhanced services once the BOCs have implemented ONA and the structural separation requirements have been removed. Therefore, we dismiss as moot BellSouth's pending CEI plan modification for voice messaging services. *See Amendment to BellSouth's Plan for Comparably Efficient Interconnection for Voice Messaging Services* (filed June 1, 1993).

[23] *BOC ONA Further Amendment Order*, 6 FCC Rcd at 7649-7650, Appendix B.

[24] *BOC Safeguards Order*, 6 FCC Rcd at 7625.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The NYNEX	Transmittal Nos. 181
Telephone Companies	and 208
Tariff F.C.C. No. 1	

ORDER

Adopted: July 13, 1993; **Released: July 13, 1993**

By the Associate Bureau Chief, Common Carrier Bureau:

1. On April 15, 1993, the NYNEX Telephone Companies (NYNEX) filed Transmittal No. 181 proposing Crisis Management Services (CMS) to enable customers to obtain telecommunications services from the New York Telephone Company (NYT) when a disaster occurs at the customer's premises or in NYT's network.[1] On April 30, 1993, MFS Communications Company, Inc. (MFS) filed a petition to reject or, in the alternative, to suspend and investigate Transmittal No. 181. On May 10, 1993, NYNEX filed a reply.[2] The transmittals are currently scheduled to take effect on July 14, 1993.

2. NYT will offer two forms of CMS: pre-disaster and post-disaster CMS packages. Each CMS package will include a service plan and, depending upon the customer's requirements, will consist of existing tariffed services and/or specially developed services which are not currently offered in the tariff. NYNEX Tariff F.C.C. No. 1, Proposed Sections 18.1 and 18.1.1; *id.* at Revised Proposed Section 18.1.

3. A pre-disaster CMS package will be negotiated with the customer and filed with the Commission as an individual case basis (ICB) offering prior to the occurrence of a disaster. *Id.* at Proposed Sections 18.1 and 18.1.1(A)(6). Also, a pre-disaster CMS package will provide for standby services which will be activated "in the event of a disaster to provide services for a customer at an alternate premises[.]" *Id.* at Revised Proposed Section 18.1.[3]

4. A post-disaster CMS package will be negotiated with the customer and filed with the Commission as an ICB offering after a disaster has occurred at the customer's premises. *Id.* at Proposed Sections 18.1 and 18.1.1(A)(6); *id.* at Revised Proposed Section 18.1. Post-disaster CMS packages will not be available in the event of a failure in the NYT's telecommunications network. *Id.* at Revised Proposed Section 18.1.

5. A customer purchasing a pre-disaster CMS package will pay a recurring monthly ICB rate for the standby services. *Id.* at Revised Proposed Section 18.1; *id.* at Proposed Section 18.1.1(A)(5). Once the standby services are activated due to a disaster, a pre-disaster CMS customer will pay, in lieu of the ICB standby rate, the full tariffed monthly rate (calculated daily) for each existing service and an increased ICB monthly rate (calculated daily) for each specially developed service for the duration of the disaster. *Id.* at Revised Proposed Section 18.1; *id.* at Proposed Section 18.1.1(A)(5). A customer purchasing a post-disaster CMS package will pay "the current tariffed service monthly rate(s) on a daily basis for the duration of the disaster....[,] and any applicable specialized service rates and charges." *Id.* at Proposed Section 18.1.1(A)(5). Pre-disaster and post-disaster CMS customers also will pay a nonrecurring service activation charge. *Id.*

6. MFS alleges that NYNEX's CMS proposal is unreasonably discriminatory because it involves pricing already tariffed services on an individual case basis. MFS Petition at 2-3. Also, MFS asserts that NYNEX's CMS proposal is inherently objectionable because the Commission determined in CC Docket No. 88-136[4] that NYNEX had employed ICB pricing to establish unreasonably discriminatory rates. MFS Petition at 3-4. In addition, MFS claims that the proposed charge constitutes a "double-recovery" for NYNEX because NYNEX already recovers the costs of service restoration in its current service rates. *Id.* at 4.[5]

7. NYNEX responds that tariffed services in a CMS package will be subject to the standard tariff rate for the period during which the customer uses those services. NYNEX Reply at 4. Also, NYNEX maintains that the *ICB*

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[1] NYNEX Tariff F.C.C. No. 1, Proposed Section 18 at asterisk (provides that CMS will be "[a]vailable in NYT only."). Proposed Section 18.1 states that "[a] disaster is any event that renders unusable a premises used by a customer to conduct business, or renders unusable a service or services purchased by the customer from [NYT]."

[2] On July 8, 1993, pursuant to Special Permission No. 93-582, NYNEX filed Transmittal No. 208 proposing revisions to its CMS proposal.

[3] Standby services will consist of existing tariffed services or specially developed services which are not currently offered in the tariff. *Id.*

[4] *See* Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, 4 FCC Rcd 8634 (1989) (in general, the Commission found that the local exchange carriers (LECs) failed to demonstrate that the ICB rates which they had filed for DS3 and DS3-equivalent services were not unreasonably discriminatory under Section 202(a) of the Communications Act, 47 U.S.C. Section 202(a)) (*ICB Order*), *petition for reconsideration denied, and petitions for partial reconsideration denied in part and granted in part*, 5 FCC Rcd 4842, 4846 (1990) (the Commission found that it "expect[ed] future LEC ICB filings for any service will explain the justification for offering a particular service on an ICB basis.").

[5] Further, MFS contends that NYNEX's CMS proposal, as initially filed, is unreasonably discriminatory and contrary to public policy because NYNEX may unfairly divert its disaster recovery efforts from non-CMS customers to CMS customers. *Id.* at 4-5. NYNEX has revised its original CMS proposal to eliminate its plan to offer post-disaster CMS packages for disasters involving the NYT network. *See supra* paragraph 4. NYNEX also has revised its initial CMS proposal to include the statement that "CMS customers will not receive service at the expense of non-CMS customers." NYNEX Tariff F.C.C. No. 1, Revised Proposed Section 18.1. In addition, NYNEX has revised its original CMS proposal to provide that NYT will restore services affected by a disaster in the network or at a customer's premises in accordance with the requirements of Part 64 of the Rules. *Id.* In general, Part 64 of the Rules sets forth the policies and procedures for provisioning and restoring priority services in emergencies.

Order does not stand for the proposition that LEC ICB filings are inherently objectionable, but rather, for the proposition that the LECs must explain their justification for offering a particular service on an individual case basis. *Id.* NYNEX claims that its proposal to offer CMS at ICB rates is warranted under the *ICB Order* because the total rate for each CMS package will necessarily differ based on the mix of services chosen by each customer. *Id.* at 4-5. Further, NYNEX argues that the proposed CMS charge does not constitute a "double-recovery" because it will cover the cost of providing back-up facilities and not the cost of restoring primary service. *Id.* at 6.

8. The Common Carrier Bureau has reviewed Transmittal Nos. 181 and 208 and all the associated pleadings. We conclude that no compelling argument has been presented that the tariff provisions, as revised, are so patently unlawful as to require rejection and that no question has been presented that warrants investigation at this time.

9. Accordingly, IT IS ORDERED that the petition to reject, or in the alternative, to suspend and investigate The NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 181, filed by MFS Communications Company, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Jill Ross Meltzer
Associate Bureau Chief
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-203

In the Matter of

Amendment of Section 73.202(b), RM-8245
Table of Allotments,
FM Broadcast Stations.
(Islesboro, Maine)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 25, 1993; Released: July 20, 1993

Comment Date: September 9, 1993
Reply Comment Date: September 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Islesboro Broadcasting Company ("petitioner"), requesting the allotment of Channel 288B1 to Islesboro, Maine, as that community's first local broadcast service. Petitioner filed information in support of the proposed allotment and indicated its intention to file an application for Channel 288B1 at Islesboro.

2. In support of its request, petitioner states that Islesboro is an island community located in Penobscot Bay on Maine's "mid-coast" and enjoys daily passenger and vehicle ferry service from Lincolnville, Maine. According to petitioner, Islesboro has an independent form of government, schools and a post office, along with two "lodging" establishments and some twenty-five businesses. Petitioner states Islesboro has a full-time population of 570 and a seasonal population of over 2,000. Petitioner contends that allotment of Channel 288B1 to Islesboro will provide a much needed broadcast service to the community and surrounding area.

3. We note that our review of the proposal shows that the 1993 edition of the *Rand McNally Commercial Atlas* (*"Atlas"*) has two listings for Isleboro, one for "Isleboro, town of," with a separate zip code and a 1990 U.S. Census population of 579. The second listing is for Isleboro (township, "town," or other minor civil division) with a population of 125 and a post office. No source is indicated for the population figure.

4. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several states and communities." The Commission has defined "communities" as geographically identifible population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. However, Isleboro's status as a community is ambiguous, in light of the listing in the *Atlas*. Furthermore, while petitioner has alleged that there are some local businesses and schools, it has not specifically identified these entities with names and addresses or shown that they are intended to serve Islesboro, as opposed to other areas. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, the petitioner should present the Commission with specific information to demonstrate that Islesboro has the social, economic and governmental indicial to qualify it as a "community" for allotment purposes. *See Gretna, Marianna, Quincy and Tallahasee, Florida*, 6 FCC Rcd 633 (1991), and cases cited therein. Petitioner is requested to clarify the population of the community of Islesboro along with the location of the post office.

5. Channel 288B1 can be allotted to Islesboro in compliance with the Commission's minimum distance separation requirements with a site restriction 16.7 kilometers (10.4 miles) south of the community.[1] The site restriction will prevent a short spacing to Station WHMX, Channel 289C2, Lincoln, Maine. Since Islesboro is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. The proposal must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's Monitoring Station at Belfast, Maine.

6. We believe the public interest would be served by proposing the allotment of Channel 288B1 to Islesboro, Maine, if it is ultimately found to be a community for allotment purposes, since it could provide a first local FM broadcast service to the community. Accordingly, we seek comments on the proposed amendment of the FM Table of Alotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Islesboro, Maine	---	288B1

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 9, 1993,** and reply comments on or before **September 24, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

[1] The coordinates for Channel 288B1 at Islesboro are 44-09-31 and 68-53-03.

Richard J. Hayes, Jr., Esquire
13809 Black Meadow Road
Spotsylvania, Virginia 22553

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-141

In the Matter of

Expanded Interconnection with
Local Telephone Company Facilities

BellSouth Telecommunications, Inc.,
Carolina Telephone and Telegraph Co.,
and GTE Service Corporation

Petitions for Exemption from
Physical Collocation Requirement

MEMORANDUM OPINION AND ORDER

Adopted: July 14, 1993; Released: July 15, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the *Expanded Interconnection Order*, the Commission adopted rules requiring local exchange carriers (LECs) to offer interconnection to competitive access providers (CAPs).[1] Pursuant to the Commission's decision, CAPs are permitted to physically collocate equipment necessary for interconnection in LEC central offices. The Commission decided to exempt particular central offices from the physical collocation requirement if LECs could make a factual showing that those offices did not have sufficient unused space for physical collocation.[2] The Commission also stated that it would consider exempting LECs from its physical collocation requirement based on a formal decision by a state legislature or public utility regulatory agency favoring interconnection of intrastate special access service through virtual collocation rather than physical for intrastate expanded interconnection, or allowing LECs to choose what form of interconnection to use for intrastate expanded interconnection.[3]

2. In the *Exemption Order*, the Common Carrier Bureau (Bureau) considered petitions for exemption from the Commission's physical collocation requirement under delegated authority.[4] Specifically, BellSouth Telecommunications, Inc. (BellSouth) sought exemption on the basis of two state policy decisions, and the Bureau denied BellSouth's petition for both states. Also, the Bureau granted the petition of GTE Service Corporation (GTE) based on the state policy decisions of four states, and denied it for six states. Finally, United Telephone Co. (United) filed a petition for exemption based on a state policy decision of the North Carolina Utilities Commission and four other state policy decisions. The Bureau denied United's petition for North Carolina.[5]

3. On June 14, 1993, BellSouth and GTE filed petitions for exemption on the basis of space limitation for several specific central offices in states in which their state action-based petitions were denied.[6] On June 22, 1993, Carolina Telephone and Telegraph Co. (Carolina), a subsidiary of United, filed a petition for exemption for one central office at Fort Bragg, North Carolina. No oppositions or replies were filed against either Carolina's petition or GTE's petition. Two parties filed oppositions against BellSouth's petition: Business Telecom, Inc. (Business Telecom), a CAP in North Carolina; and Metrex Corporation of Alabama (Metrex), a CAP in Alabama.

II. PLEADINGS

A. Petitions for Exemption

4. BellSouth and GTE state that, in the central offices for which they petition for exemption, there is not sufficient space to provide physical collocation.[7] BellSouth and GTE will provide virtual collocation at central offices where their requests for exemption from the physical collocation requirement are granted.[8] These LECs provide tables specifically listing the central offices for which they seek exemption based on lack of space, the area in square feet in each of those offices, and the amount of area currently

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[1] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) (*Expanded Interconnection Order*). For a definition of physical collocation, see *Expanded Interconnection Order*, 7 FCC Rcd at 7390 (para. 39).

[2] *Expanded Interconnection Order*, 7 FCC Rcd at 7390-91 (para. 41), 7407-08 (paras. 77-80), n.190.

[3] *Expanded Interconnection Order*, 7 FCC Rcd 7390-91 (para. 41). The Commission determined that such state policies must be adopted in final decisions reached after proceedings giving interested parties a reasonable opportunity to be heard. Finally, the Commission required petitions for exemption based on state action to be submitted by the date for filing expanded interconnection tariffs, which was February 16, 1993. *Id.*

[4] Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, CC Docket No. 91-141, DA 93-658 (released June 9, 1993) (*Exemption Order*).

[5] Based on state regulatory action, BellSouth sought and was denied exemption for offices located in Alabama and North Carolina. The states for which GTE's petition was granted were Arkansas, Indiana, Ohio, and Wisconsin. GTE's petition was denied for office located in Alabama, Missouri, North Carolina, Oklahoma, Pennsylvania, and West Virginia. United's petition was granted for offices located in Indiana and Ohio, and was denied for Missouri, North Carolina, and Pennsylvania.

[6] The central offices for which BellSouth, Carolina, and GTE seek exemption are listed in Appendix A of this Order.

[7] BellSouth Petition at 2-3; GTE Petition at 2.

[8] BellSouth makes virtual collocation available in all its central offices where physical collocation is not available or where it has negotiated a virtual collocation arrangement with a collocator. BellSouth Tariff F.C.C. No. 1, Section 20.17, Original Page 20-26 (effective June 16, 1993). GTE has filed tariffs for virtual collocation at the five central offices for which it seeks exemption from physical collocation. GTE Telephone Operating Companies Tariff F.C.C. No. 1, Section 17.11.2, Original Pages 361.6 and 361.8 (effective June 16, 1993); GTE System Telephone Companies Tariff F.C.C. No. 1, Section 17.11.2, Original Page 517.3 (effective June 16, 1993).

occupied by LEC equipment or reserved for future use.[9] Carolina claims that it leases its central office space from the United States Department of Defense (Defense Department), and that its lease does not permit physical collocation. Specifically, Carolina quotes its leasing agreement as follows:[10]

> Tenant shall not assign or transfer this lease, nor sublet any portion of the demised premises except that a portion of the demised premises may be sublet to Carolina Power and Light Company or to any successors to the business of Carolina Power and Light Company.

Carolina maintains that its situation is similar to that of Bell Atlantic, who leases central office space at the Pentagon in Northern Virginia.[11]

B. Comments

5. Business Telecom and Metrex contend that BellSouth seeks exemption in particularly high-traffic central offices in order to frustrate competition.[12] Metrex and Business Telecom note that BellSouth describes central office space not currently occupied as "unavailable," "vacant reserved," or "not usable," and asserts that BellSouth has not adequately defined these terms.[13] Business Telecom and Metrex criticize BellSouth for failing to provide affidavits of operations personnel to explain or attest to the accuracy of these descriptions.[14] Business Telecom and Metrex complain that there are wide and unexplained variations in space availability between central offices for which BellSouth seeks exemption.[15] Business Telecom notes that BellSouth lists almost 6500 square feet as unavailable for physical collocation in its Raleigh central office, or more than one third of the space in that office, and asserts that this is unreasonable on its face.[16] Similarly, Metrex claims that BellSouth seeks to reserve an excessive amount of space, 29,633 square feet, in its Birmingham Main and Toll central office.[17]

C. Reply

6. BellSouth replies generally that it used the same methodology to support the petition for exemption before us now as it did to support the petition granted in the *Exemption Order*.[18] BellSouth explains that the "unavailable" areas represent areas such as lobbies, restrooms, employee break rooms, electric switchboard rooms, storage areas, and stairwells.[19] BellSouth also states that the "unusable" areas are unsheltered areas or areas with excessive moisture.[20]

7. BellSouth also discusses in detail the unavailable and unusable spaces in the one central office cited by Business Telecom and the four central offices cited by Metrex.[21] BellSouth claims that an 875 square foot area in its Raleigh, North Carolina central office is unusable because it has a ceiling height of 8 feet, 6 inches, and is less than 10 feet in width.[22] BellSouth further contends that 1753 square feet will be required in its Birmingham Five Points central office for space necessary for a switch replacement during 1994, and that, in any event, 1974 square feet of future space will be available for physical collocation beginning in 1995.[23] BellSouth also asserts that it must reserve 26,028 square feet in its Birmingham Main and Toll central office because that central office is a condominium facility shared with AT&T. BellSouth states that it and AT&T are in the process of exchanging or rearranging their quarters, and anticipates that some of this space will be available for collocation in the fourth quarter of 1994.[24]

III. DISCUSSION

8. *Discussion.* The Commission stated in the *Expanded Interconnection Order* that "petitions will be evaluated based on factual showings related to the issue of space availability."[25] Business Telecom and Metrex generally assert that BellSouth has not made adequate factual showings that would justify exemption from the Commission's physical collocation requirement. We disagree. BellSouth has adequately explained its need for an exemption by providing charts in its petition and its reply specifically listing the central offices for which it seeks exemption based on lack of space, the area in square feet in each of those offices, and the amount of area currently occupied by LEC equipment or reserved for future use. Furthermore, none of BellSouth's exemption requests were based on "unidentified future uses" like those in Bell Atlantic's petition in the *Exemption Order*.[26]

9. The showings GTE and BellSouth have made here are substantially similar to those that they made in their original petitions for exemption. For example, GTE does not reserve for its own future use more than 336 square feet in any of its central offices.[27] For the five central offices where BellSouth's petition is opposed, BellSouth states that physical collocation will be available at two of those central offices beginning in 1995, when BellSouth will replace old switches with new technology.[28] At its Raleigh, North Caro-

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[9] BellSouth Petition at Exh. 1; GTE Petition at Attachment.
[10] Carolina Petition at 1-2.
[11] *Id.* at 1-2. *See Exemption Order*, paras. 22-23.
[12] Business Telecom Opposition at 2; Metrex Opposition at 2-3. Metrex opposes BellSouth's petition for all four central offices in Alabama, while Business Telecom focuses its opposition on BellSouth's Raleigh, North Carolina office.
[13] Business Telecom Opposition at 3; Metrex Opposition at 3.
[14] Business Telecom Opposition at 3; Metrex Opposition at 3.
[15] Business Telecom Opposition at 3-4; Metrex Opposition at 3-4.
[16] Business Telecom Opposition at 4. Specifically, BellSouth lists 3126 square feet as "unavailable," 1772 square feet as "vacant reserved space," and 1555 square feet as "space not usable," for a total of 6453 square feet. BellSouth Petition at Exh. 1.
[17] Metrex Opposition at 4. The Common-Language Location Identification (CLLI) code for this central office is "BRHMALMT."
[18] BellSouth Reply at 2-3.,
[19] *Id.* at 3-6.
[20] *Id.*
[21] *Id.*
[22] *Id.* at 3.
[23] *Id.* at 4.
[24] *Id.* at 4-5.
[25] *Expanded Interconnection Order*, 7 FCC Rcd at 7408 n.190.
[26] *Exemption Order*, para. 15.
[27] GTE Petition at Attachment.
[28] BellSouth Reply at 4-5. These two central offices are the Birmingham Main and Toll office and the Birmingham Five Points office. *Id.*

lina central office, BellSouth states that it is reserving 1772 square feet for a signal transfer point (STP) and a digital cross-connect system.[29] For the remaining two central offices, BellSouth reserved no space for its future use in one central office and 145 square feet in the other.[30] With regard to BellSouth's Birmingham Main and Toll central office, we note that BellSouth shares this space with AT&T, and that BellSouth and AT&T are in the process of rearranging their space assignments. BellSouth expects to be able to offer physical collocation at this central office by the fourth quarter of 1994, when this rearrangement is complete.[31]

10. We conclude, as we did in the *Exemption Order*, that the information provided by BellSouth and GTE generally satisfies the Commission's "factual showing" requirement.[32] Therefore, we grant the petitions for exemption filed by GTE and BellSouth for the central offices listed in Appendix A of this Order. However, because BellSouth expects that it will be able to offer physical collocation at its Birmingham Main and Toll central office and its Birmingham Five Points central office by 1995,[33] we grant BellSouth exemptions at these central offices only until December 31, 1994.

11. However, we deny Carolina's petition for exemption for its Fort Bragg central office. In the *Expanded Interconnection Tariff Order*, we stated that leased central offices would be exempted from the physical collocation requirement if the office was leased prior to the released date of the *Expanded Interconnection Order*.[34] We also concluded that sufficient grounds for waiver would be "if the office is leased from a U.S. government agency and that agency does not consent to provision of physical collocation."[35] Carolina has submitted only an excerpt from its lease prohibiting subletting. The Defense Department has not raised national security concerns, as it did when Bell Atlantic sought exemption for its Pentagon central office.[36]

12. The Bureau determined in the *Expanded Interconnection Tariff Order* that physical collocation is part of a communications service, not a sublease of space in the traditional sense. Therefore, this language does not indicate whether the Defense Department would permit physical collocation at the Fort Bragg central office. Without any indication from either Carolina or the Defense Department that the Defense Department would not consent to physical collocation, Carolina's petition for exemption for its Fort Bragg central office must be denied.[37]

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that the petitions for exemption from the Commission's physical collocation requirement filed by BellSouth Telecommunications, Inc. and GTE Service Corporation ARE GRANTED for the central offices listed in Appendix A of this Order.

14. IT IS FURTHER ORDERED that the petitions for exemption from the Commission's physical collocation requirement filed by Carolina Telephone and Telegraph Co. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

Central Offices for Which LECs Seek Exemption From Physical Collocation on the Basis of Lack of Space

A. BellSouth[1]

1. BRHMALFS	Birmingham, AL *
2. BRHMALMT	Birmingham, AL *
3. BRHMALRC	Birmingham, AL
4. HNVIALRA	Huntsville, AL
5. CHRLNCRE	Charlotte, NC
6. CHRLNCUN	Charlotte, NC
7. GNBONCAP	Greensboro, NC
8. PMBRNCCE	Pembroke, NC
9. RLGHNCHO	Raleigh, NC

B. GTE[2]

1. Durham-Lakewood, NC
2. Durham-Nelson, NC
3. Broken Arrow, OK
4. Marshfield, MO
5. Branson, MO

C. Carolina Telephone and Telegraph

1. Fort Bragg, NC

* BellSouth is granted exemption at this central office only until December 31, 1994.

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[29] BellSouth Reply at 3.
[30] BellSouth Petition at Exh. 1.
[31] BellSouth Reply at 5.
[32] *Exemption Order* at para. 7. GTE states that it bases its reservations of space for its future use on a five-year forecast. GTE Petition at 3. We concluded in the *Exemption Order* that a five-year forecast is reasonable for this purpose. *Exemption Order* at para. 16.
[33] BellSouth Reply at 4-5.
[34] Ameritech Operating Companies, *et al.*, CC Docket No. 93-162, DA 93-657, at para. 84 (released June 9, 1993) (*Expanded Interconnection Tariff Order*).
[35] *Id.*
[36] *See Exemption Order*, para. 22 n.74.
[37] Carolina is free to file a petition for waiver of the physical collocation requirement for its Fort Bragg central office, making the showing described in paragraph 84 of the *Expanded Interconnection Tariff Order*.
[1] BellSouth Petition at Exh. 1.
[2] GTE Petition at 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Front Range Educational Media (KBDI-TV) against Colorado Springs Cablevision, Inc.	CSR-3781 CO0030

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993; Released: July 20, 1993

By the Chief, Mass Media Bureau:

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ["the Cable Act"] became law.[1] On December 4, 1992, the Cable Act's requirement for mandatory carriage of certain noncommercial educational stations became effective.[2] On January 4, 1993, Front Range Educational Media ["KBDI-TV"], licensee of Station KBDI-TV (Educ., Channel 12), Broomfield, Colorado, filed a complaint seeking to ensure the station's carriage on channel 12 on the cable system serving Colorado Springs, Colorado, which is operated by Colorado Springs Cablevision, Inc. ["CSCI"]. CSCI opposed this complaint on February 18, 1993.[3]

2. KBDI-TV asserts that, despite its status as a qualified local noncommercial educational television station entitled to on-channel carriage rights on channel 12 on CSCI's Colorado Springs cable system, CSCI has refused to carry KBDI-TV at all. Because KBDI-TV's Grade B service contour encompasses CSCI's principal headend in Colorado Springs, as shown by a contour map submitted by the station, KBDI-TV states that CSCI's refusal to carry the station is a violation of the station's must-carry rights.

3. In opposition, CSCI cites the *Standstill Order* associated with the litigation involving the constitutionality of the 1992 Cable Act at issue in *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission,* Civil Action No. 92-2247 (D.D.C. December 4, 1992). CSCI also claims that KBDI-TV is not entitled to assert carriage rights because its city of license is not within 50 miles of the cable system's principal headend, nor does the station provide a good quality signal to CSCI's principal headend, citing *KKTV, Inc.,* 6 FCC Rcd 3621 (1991).

4. We uphold KBDI-TV's complaint against CSCI. Initially, we note that on April 8, 1993, the United States District Court for the District of Columbia issued a decision in *Turner Broadcasting System, Inc., supra,* upholding the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and terminating the *Standstill Order* previously issued in that proceeding. Furthermore, KBDI-TV is clearly a qualified noncommercial educational television station within the meaning of the 1992 Cable Act and our rules. As required by 47 U.S.C. §535 to be eligible for mandatory carriage, KBDI-TV's Grade B service contour encompasses CSCI's principal headend. *See also* 47 C.F.R. §76.55(b)(2). Consequently, Broomfield's distance from CSCI's headend is not relevant. Neither is the holding in *KKTV, Inc., supra,* which dealt with certain commercial broadcast stations licensed to Denver, Colorado. Therein, the Commission found that Grade B service contour maps were to be relied on, unless specific and reliable engineering data to the contrary was submitted in rebuttal. *Id.* at 3622. CSCI has submitted no data whatsoever to rebut KBDI-TV's evidence of its Grade B contour location, or to support its initial allegation of poor signal quality at CSCI's principal headend.

5. In view of the foregoing, we find that grant of KBDI-TV's petition is in the public interest.

6. Accordingly, IT IS ORDERED, That the petition for special relief (CSR-3781) filed January 4, 1993, by Front Range Educational Media IS GRANTED in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended.

7. IT IS FURTHER ORDERED, That Colorado Springs Cablevision, Inc. SHALL COMMENCE CARRIAGE of the signal of KBDI-TV on cable channel 12 of CSCI's cable system serving Colorado Springs, Colorado, forty-six (46) days from the release date of this *Order.* This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

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[1] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[2] 47 U.S.C. §535.

[3] On March 11, 1993, the Commission adopted a *Report and Order in MM Docket No. 92-259,* 8 FCC Rcd 2965 (1993) ["*Report and Order*"]. In view of the fact that the rules adopted therein could have an impact upon a cable system's obligation to carry certain noncommercial educational stations, and could also affect the resolution of a disputed carriage request already on file with the Commission, parties opposing such requests on file were permitted 15 days to file a supplemental pleading after the release date of the *Report and Order, supra.* Public Notice, "Carriage of Noncommercial Educational Stations by Cable Television Systems," Mimeo No. 32419 (released March 26, 1993). Replies to such supplemental oppositions could be filed within 5 days. *Id.* No supplemental opposition was filed by CSCI.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-21

In the Matter of

Implementation of Section 26 of
the Cable Television Consumer
Protection and Competition Act
of 1992

Inquiry into Sports
Programming Migration

INTERIM REPORT

Adopted: June 24, 1993; Released: July 1, 1993

By the Commission:

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I. INTRODUCTION

1. This *Interim Report* is issued pursuant to Section 26 of the Cable Act of 1992, which directs the Commission to "conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services" and to issue reports to Congress on or before July 1, 1993, and July 1, 1994.[4] On February 9, 1993, the Commission released its *Notice of Inquiry* in this proceeding.[5] The *Notice* sought information and comment on a number of issues regarding the movement of sports programming from broadcast to cable television, including the causes and consequences of migration, as well as trends with respect to particular sports. Pursuant to Section 26(c) of the Act, the *Notice* also asked a number of questions regarding preclusive contracts between college athletic conferences and video programming vendors.

2. The majority of parties commenting in this proceeding, including cable programmers and sports entities, contend, in general, that sports programming has not migrated from broadcast to cable television, and argue that there is currently more sports programming on broadcast television than ever before. Some commenters, however, most notably the Association of Independent Television Stations (INTV), assert that the trend in distribution of sports programming has been away from broadcast television, particularly at the local level. They submit that this is detrimental to independent broadcast stations as well as the more than 40 percent of the national population that does not subscribe to cable. INTV and others submit that taxpayers have helped finance professional sports teams through tax advantages and the construction of new stadiums and other infrastructure, that sports teams enjoy special status under the antitrust laws, and that there is significant public involvement in college funding. As a result, they argue, taxpayers should be entitled to enjoy professional and collegiate sports on free, over-the-air television. These commenters are concerned that cable television's dual revenue streams (*i.e.*, advertising and subscription revenues) will enable it to consistently outbid broadcasters, who are supported by a single revenue stream (*i.e.*, advertising revenues), for sports programming.

3. The purpose of this *Interim Report* is to compile, and where appropriate to analyze, the data submitted by commenters, so as to give Congress and other interested parties a cohesive picture of trends in sports programming distribution over the past decade. We believe that the information detailed herein will help Congress and the Commission to determine whether any legislative or regulatory action is currently necessary or may become necessary in the future. We also believe, however, that it would be premature to make specific recommendations to Congress in this *Interim Report*. While the record in this proceeding has provided us with a workable preliminary review of how video sports programming is distributed, the information we have received raises further questions. We therefore will point out areas of potential concern that we

[4] The text of Section 26 of the 1992 Cable Act is set forth in Appendix A.
[5] *Notice of Inquiry* in PP Docket No. 93-21, 8 FCC Rcd 1492 (1993) (*Notice*).

intend to explore in greater detail in our forthcoming *Further Notice of Inquiry* and ultimately in our *Final Report*, to be issued on or before July 1, 1994.

4. The structure of this *Interim Report* is similar to the organization of the *Notice*. First, we will discuss commenters' suggestions regarding the scope of our inquiry and our proposed method for measuring migration. Next, we will detail our findings as to how sports programming is currently distributed, with individual emphasis on four professional and two college sports. We will then examine the existence and prevalence of preclusive contracts in collegiate athletics, particularly college football. We next address commenters' predictions regarding the future of sports programming and their ultimate recommendations with respect to this proceeding. Finally, we will discuss what additional data we may need to obtain in anticipation of our *Final Report*.

II. SCOPE OF THE COMMISSION'S INQUIRY

A. Sports Included and Time Period Covered

5. In the *Notice*, the Commission proposed to focus its inquiry on professional football, basketball, baseball and hockey, and on college football and basketball because these sports have had significant broadcast and non-broadcast exposure.[6] Commenters tend to emphasize these sports in their submissions, although they offer data for other sports as well (*see* Section III-G, *infra*). While the *Notice* also requested comment on distribution of the Olympic Games, few commenters specifically address this issue. The *Notice* additionally proposed that the inquiry cover sports programming since 1980, a point in time when superstations and cable networks were operational but had not yet reached the level of subscribership they enjoy today.[7] No commenter objects to this proposed starting point, although NCAA notes that 1984 represented a turning point in the telecasting of college athletics due to *NCAA v. University of Oklahoma*, 468 U.S. 85 (1984), whereby the U.S. Supreme Court invalidated the NCAA's agreements to implement its joint marketing plan for NCAA members.[8] In light of the foregoing, we will measure sports migration with reference to broadcasts of the sports mentioned above from 1980 to the present, keeping in mind that the distribution of college football went through a change in 1984.

B. Characterization of Superstations

6. The *Notice* also inquired as to the proper classification of superstations for purposes of this study.[9] As pointed out in the *Notice*, a superstation is an independent broadcast station that is retransmitted by satellite.[10] Therefore, while a superstation might be considered a local broadcast station within its broadcast coverage area, it might be considered a cable service outside of its broadcast area. MLB, NBA and NHL contend that superstations should be considered local broadcast stations within their local market areas and national cable networks outside of those areas.[11] Tribune, Turner and United Video argue that superstations should be viewed as local media. Tribune asserts that superstation broadcasts are directed at the hometown fan of the local team and that the advertisers attracted to these telecasts predominantly seek to target local viewers.[12] Turner argues that like all broadcast stations, a superstation must serve the needs of its local community in order to maintain its broadcast license.[13] United Video notes the differences between superstations and local cable sports networks, arguing that superstations are typically accessible to consumers at more reasonable prices, that sports programming is only a small part of a superstation's total schedule, that superstations are subject to blackouts while sports networks are not,[14] and that superstations offer no local advertising outside of their local markets.[15]

7. For purposes of calculating the degree of sports migration in a particular area, we will treat superstations as local broadcast stations within their local markets and as national cable networks outside of their local markets. We consider superstations comparable to basic cable networks that do not predominantly carry sports programming, such as TNT and USA Network. We therefore intend to group distant superstations, national basic cable networks and national and regional sports networks as cable programmers when measuring sports migration. We recognize, however, that there are differences between superstations and cable sports channels, as United Video points out. We will therefore attempt to distinguish between particular cable programmers where sufficient data are available.

C. Measurement of Migration

8. In the *Notice*, we defined sports migration as the movement of sports programming from broadcast television to a subscription medium.[16] We noted that it is easy to measure migration of major post-season events such as the World Series, the Stanley Cup Finals, the Super Bowl, the NBA Championships, college football bowl games, or the NCAA Final Four, because the character of such events has remained relatively constant over the years. With respect to regular season games, however, the *Notice* pointed out that schedule changes from year to year and variations in the strength of teams make migration of regular season games more difficult to measure. To account for the differences between regular season and post-season games, the *Notice* proposed to measure migration by comparing regular season games exhibited on broadcast and non-broadcast media each year and by making a separate comparison for post-season games. While we indicated in the *Notice* that we believed the number of games in each category to be

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[6] *Notice* at 1493.
[7] *Id.*
[8] NCAA Comments at 2-4.
[9] *Notice* at 1493.
[10] *Id.* at n.13.
[11] MLB Comments at 13; NBA Comments at 6; NHL Comments at 7.
[12] Tribune Comments at 2-4.
[13] Turner Comments at 12-13.
[14] The Commission's sports blackout rules require cable systems within 35 miles of collegiate of professional games to refrain from showing home games carried by a superstation if the game is not available on any broadcast station in the local area. *See* 47 C.F.R. Sections 76.67, 76.5(e).
[15] United Video Comments at 3-7.
[16] *Notice* at 1492.

the proper comparison, we sought comment on whether we should instead measure migration with reference to audience ratings or other criteria.[17]

9. Commenters offer several suggestions regarding the appropriate way to measure sports migration. NCAA supports a comparison of numbers of games rather than ratings, particularly in light of the significant extent to which sports programming is viewed outside the home.[18] NHL also discourages use of audience ratings, contending that annual average audience ratings are often unavailable at the local level and that audience fragmentation has generally driven ratings down.[19] NBA, on the other hand, suggests that we consider the number of viewers to whom programming is made available or the number of viewers who actually watched the programming.[20] Rather than a strict numerical comparison, Daniel Scott Dunham suggests that the Commission compare the percentage of games on broadcast TV with the percentage of games on subscription media.[21] NFL submits that the Commission should look to whether programming that was otherwise available on broadcast television has moved to a non-broadcast medium, and whether consumers have access to fewer games on broadcast television as a result. NFL would also include information regarding the willingness of broadcasters to purchase the rights to sports programming, arguing that "[i]f television rights are sold to basic cable networks because they cannot be sold at a reasonable price to broadcasters, that cannot properly be considered 'migration.'" [22] NBC urges us to focus on post-season games and asserts that post-season games are more consistent than regular season games in quantity and in viewer demand from year to year.[23]

10. In addition, Time Warner submits that because the level of viewer interest for a given telecast varies substantially among local, regional and national audiences, the Commission should treat local, regional and national sports programming separately. It also contends that the Commission should distinguish between post-season and championship games, and that the Commission should break down games by audience type (*i.e.*, home, away, neutral). Time Warner further urges the Commission to consider qualitative differences in coverage, such as frequency of commercial interruption, pre-game and post game shows, or production quality.[24] Time Warner also asserts that the programming strategies of the major professional sports are a product of a number of factors, including their internal organization, the importance of gate receipts as a source of revenue, labor pressures, the legal environment, and their local, regional and national popularity.[25]

11. While the optimal method of measuring sports migration would be, as Andrew Zimbalist suggests, a comparison of the number of games and viewership of events actually shown on broadcast television with the projected number of games and projected viewership of events that would be broadcast absent the existence of non-broadcast video distributors,[26] such projections are too speculative to form the basis for this study. To achieve the best measurement practicable given existing data, we will combine the several approaches suggested by the commenters. Accordingly, we will consider both the number of games shown on broadcast and cable television since 1980 and the ratings of those telecasts,[27] if such data are available. We will consider national and local telecasts separately, and we will differentiate between regular season and post-season games. We will indicate the total number of games played each season to provide more accurate year-to-year comparisons. To the extent we have data for championship games such as the Super Bowl or the World Series separate from other post-season games, we will so specify. We will also take note if a particular event previously shown on broadcast television is now shown on cable television. We will acknowledge other relevant factors suggested by commenters as appropriate.[28]

III. SUMMARY OF FINDINGS REGARDING THE CURRENT DISTRIBUTION OF SPORTS PROGRAMMING

A. Migration of Sports Programming in General

12. In the *Notice*, we requested that commenters provide examples of migration that had already occurred. We also requested specific data from 1980 through the present regarding the four professional and two college sports that are the focus of our study.[29] In addition, the *Notice* sought comment regarding the causes and consequences of sports migration, both economic and social.[30] The *Notice* also requested information on the impact of superstation telecasts of sports events.[31] In addition, the *Notice* sought information regarding the availability of superstations, ESPN and other national cable networks offering significant sports programming, such as TNT and BET, and inquired as to the growth of regional sports networks, both broadcast and cable, and pay-per-view services.[32] Data regarding these latter issues are included in Appendix C, Chart 1.

13. *General comments.* Most commenters contend that there has been no significant migration of sports programming from broadcast television to subscription media. They argue that cable carriage of sports has not decreased the number of sports events shown on broadcast television, but rather has supplemented broadcast television so as to in-

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17 *Id.* at 1494.
18 NCAA Comments at 4.
19 NHL Comments at 7-8.
20 NBA Comments at 5.
21 Daniel Scott Dunham Comments at 1-4.
22 NFL Comments at 4-5.
23 NBC Comments at 3-6."
24 Time Warner Comments at 28-33.
25 *Id.* at 7-9.
26 *See* Andrew Zimbalist Comments at 1.
27 For purposes of this *Interim Report*, the word "telecast" will refer to both broadcast and non-broadcast exhibition of programming.
28 We note that Tribune believes that the *Notice* went beyond the statute by inquiring into contractual and territorial arrangements, gate receipts, licensing, superstation growth and other issues. Tribune Comments at 2. We believe that the information requested is necessary to fulfill our Congressional mandate to "investigate and analyze" trends in the migration of sports programming, "including the economic causes and the economic and social consequences of such trends." 1992 Cable Act, Section 26(a).
29 *Notice* at 1494-95.
30 *Id.* at 1496.
31 *Notice* at 1493.
32 *Id.*

crease the quantity and diversity of sports events available to the viewing public.[33] For example, NBC and NCTA cite last year's Olympics Triplecast as an example of how cable television can enhance coverage of an event without compromising the coverage provided by broadcast television.[34] A number of commenters submit that cable carriage has been particularly beneficial to collegiate athletics and other amateur sports by telecasting events that would not otherwise be shown.[35] Moreover, these commenters contend, broadcast stations remain a primary outlet, if not the preferred medium, for distribution of sports programming.[36] For example, ESPN notes that all the major professional sports championships, the major college bowl games, the NCAA basketball championships, and almost all major golf and tennis tournaments remain on the broadcast networks.[37]

14. On the other hand, INTV and Pappas contend that sports migration, particularly migration of regular season games, has become a significant problem for independent broadcast stations.[38] Similarly, CBS submits that migration is underway in some local markets. For example, CBS asserts that for the current season, none of the New York area's three hockey teams will have any local broadcast coverage, and only a limited number of the regular season games of the area's two basketball teams and two baseball teams will appear on local broadcast television.[39] NAB also expresses its concerns regarding sports migration. It cites a Congressional letter stating that only community pressure saved seven Philadelphia 76ers games for broadcast television while the other games will be offered by a cable sports network. The letter also asserts that the Minnesota North Stars and University of Tennessee football are available only on pay-per-view, and that some Pac-10 games and most Yankee games have moved to cable.[40]

15. *Causes.* With respect to the possible causes of sports migration, several commenters, challenging the assertion that significant sports migration has taken place, submit that any migration that may have occurred is due to the indifference of broadcast television.[41] For example, Time Warner asserts that broadcasters may make a determination that it is uneconomical to televise certain sports because of audience size, demographics, rights fees, production costs, or other factors.[42] INTV submits, however, that if broadcasters have not bid as high for certain events as cable operators, it is because cable channels have distinct advantages in negotiation, including a dual revenue stream, the support of a parent MSO and regional or national reach.[43] CBS similarly asserts that cable has the advantage of a dual revenue stream, that cable offers abundant alternatives to broadcast coverage thus diminishing the size of broadcast sports audiences, and that cable offers more advertising availabilities in sports programming.[44] Pappas also disagrees that broadcasters are not interested in sports programming, and argues that cable simply outbids broadcast television for sports events.[45]

16. NCTA, on the other hand, submits that although cable has two revenue streams, local broadcast stations have free, government granted spectrum that gives them 100 percent market penetration.[46] Similarly, Rainbow asserts that while owners are hesitant to broadcast home games over the air due to concerns about lost gate receipts, owners generally prefer to sell the rights to away games to broadcast stations because broadcast signals are available to the entire viewing audience. Rainbow also contends that franchise fees and other costs imposed on cable operators constrain their ability to pay programmers, and argues that broadcast advertising revenues frequently exceed the combined revenue streams available to cable.[47] Some commenters also contend that the emergence of the Fox Network among independent stations has resulted in realignment of sports programming in several markets because these stations are reluctant to preempt prime time programming for sports events.[48] Pappas disagrees, arguing that if a Fox affiliate chose to carry less sports programming, then other independents in the same market would pick up the events the Fox station dropped.[49] In addition, Time Warner contends that the programming strategies of rights holders are influenced by internal factors such as organizational, labor and scheduling issues, as well as external factors such as viewer interest, demographics and broadcasters' limited number of programming slots.[50]

17. *Consequences.* Parties who believe that significant sports migration has occurred contend that the consequences have been extremely detrimental to broadcast television stations. They argue that local stations, many of which are already in precarious financial condition, will not be able to outbid cable for sports events and will not be able to afford to provide other quality programming due to loss of sports revenues.[51] Commenters also assert that sports migration has had adverse consequences for sports fans. For example, CBS contends that basic cable service costs $25 or more and notes that in 1992, five baseball teams offered pay-per-view games on cable for as much as $7.95 per game, and four basketball teams and three hockey teams offered pay-per-view games for as much as $13.95

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[33] *See, e.g.*, ARC Comments at 4; CapCities/ABC Comments at 3; ESPN Comments at 5-6; MLB Comments at 3; NBA Comments at 1-3; NBC Comments at 1-3; NHL Comments at 19-20; NCTA Comments at 2-5; Time Warner Reply at 2-5.

[34] NBC Comments at 6-7; NCTA Comments at 12-13.

[35] *See, e.g.*, ACC Comments at 1; ARC Reply at 9-12; CAA Comments at 1-3; CAC Comments at 1-3; Colorado State Comments at 1-2; NCAA Comments at 16; Southland Conference Comments at 1-3; Southwest Conference Comments at 2; Texas Special Olympics Comments at 2; University of Denver Comments at 2-3; UIL Comments at 2.

[36] *See, e.g.*, ARC Comments at 4; ESPN Comments at 6-7; NBA Comments at 17-18; NCTA Comments at 14; NCTA Reply at 3-4; Rainbow Comments at 5-7.

[37] ESPN Comments at 6-7.

[38] *See generally*, INTV Comments, INTV Reply, Pappas Reply.

[39] CBS Reply at 3-5.

[40] NAB Comments at 2.

[41] *See, e.g.*, Madison Square Garden Comments at 2-4; NCTA Comments at 8-13; Rainbow Comments at 9-10, 14-18; Time Warner Comments at 36-37.

[42] Time Warner Comments at 10-11.

[43] INTV Reply at 2-5.

[44] CBS Reply at 8-10.

[45] Pappas Reply at 7-8.

[46] NCTA Reply at 5.

[47] Rainbow Comments at 5-7; 18-20.

[48] *See, e.g.*, ARC Reply at 20 n.6; MLB Comments at 8; Rainbow Comments at 17-18; Turner Comments at 14.

[49] Pappas Reply at 7.

[50] Time Warner Comments at 14-28.

[51] INTV Reply at 8; NAB Comments at 3-5.

for regular season games and $19.95 for playoffs.[52] The New York City Department of Telecommunications and Energy notes that access to sports programming carried on MSG Network and SportsChannel will cost as much as $37.95 per month ($455 per year).[53]

18. *Impact of superstations.* NBA, NHL and MLB contend that telecasts of games over broadcast stations delivered by satellite, or superstations, can negatively affect concurrent broadcasts of other games by fragmenting the viewing audience and interfering with exclusivity.[54] MLB notes that in 1980, three superstations collectively presented 315 games while in 1993, seven superstations will present a total of 695 games. MLB submits that the most prominent of the current superstations, WTBS, WGN and WWOR, reach 58 million, 38 million and 13 million households, respectively.[55] MLB also argues that the unfair competition to CBS and ESPN posed by superstation sales of national advertising has been a major factor depressing interest on the part of national broadcast and cable networks in televising regular season baseball.[56]

19. Conversely, Turner contends that its superstation telecasts on WTBS do not divert audience from local game broadcasts. Turner asserts that 1991 ratings for home market MLB broadcasts averaged 11.3 when up against a telecast of the same game on WTBS and 11.2 when not duplicated by TBS; games duplicated by WTBS averaged a 0.5 rating in those same local markets.[57] Turner argues that while superstations do compete for advertising dollars with national network baseball, that competition is not substantial. Turner further asserts that superstations do not compete with broadcasters for local advertising dollars, since the compulsory copyright license requires a superstation signal to be carried without modification by the cable operator.[58]

20. In addition, United Video contends that superstation growth has slowed in recent years. It argues that while television coverage of professional sports has increased over the past 10 years, the superstation portion of that coverage has declined -- for example, from 22 percent of MLB games in 1982 to 11 percent in 1992, and from 11 percent of NBA games in 1986 to 4 percent in 1992. United Video further submits that superstations generate $45 to $50 million in annual revenue for major league sports from distant signal copyright fees and direct MLB superstation surcharges, and argues that loss of this revenue stream would have to be recouped from other sources, possibly pay or pay-per-view sports services.[59]

B. Professional Football

21. In addition to the more general data requested in the *Notice*, we specifically inquired as to the impact of Sunday night cable telecasts on total viewing of NFL games. We also asked how regional games are distributed and sought comment on future expansion of NFL telecasts. Further, we noted that the NFL sells exclusive telecasting rights for all its teams, unlike the other major professional sports leagues, and we requested comment on this arrangement.[60]

22. The NFL consists of 28 member clubs divided equally into 2 conferences, the NFC and the AFC. Within each conference there are 3 Divisions -- Eastern, Central and Western. Each NFL team plays a 16-game regular season schedule divided equally between home and away games. Prior to the 1990 season, 10 teams qualified for the playoffs -- the 6 divisional champions as well as the 2 other teams in each conference with the best records (*i.e.*, wild card teams). Beginning in 1990, a third wild card team was added from each conference, expanding the total number of playoff qualifiers to 12 teams. Those teams play in a four-week single elimination tournament, culminating with the two conference champions meeting in the Super Bowl.[61]

23. NFL has contracts with the three broadcast networks and with ESPN and TNT. Each of these contracts was entered into prior to the 1990 season and will expire following the 1993 season. Pursuant to its contract with NFL, NBC receives 3 pre-season games, all non-prime time regular season AFC games, all non-prime time inter-conference games where the visitor is an AFC team, all AFC playoff games (other than the AFC Wild Card game televised by ABC) and one Super Bowl. CBS receives the corresponding package for the NFC. NBC and CBS games are generally broadcast on Sunday afternoons, Thanksgiving Day and Saturday afternoons late in the season. ABC, whose telecasts are shown on Monday nights, receives 4 pre-season games, 17 regular season games (18 in 1993), two playoff games and one Super Bowl.[62]

24. With respect to its cable contracts, NFL notes that from 1980 through 1986, NFL games were shown exclusively on broadcast television. In 1987, the NFL sold eight Sunday night games to ESPN after ABC decided to drop the Thursday and Sunday night games it had previously shown as specials in addition to its Monday night games. In 1990, the NFL further increased the number of games available by restructuring regular season and post-season play and added TNT as a second cable carrier. TNT and ESPN currently share a package of 17 Sunday night games (18 in 1992 and 1993), with TNT carrying the games during the first half of the season and ESPN during the

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[52] CBS Reply at 6-7.

[53] NYC Comments at 6. We presume that NYC is referring to the cost of subscribing to basic cable plus SportsChannel plus MSG Network (where it is not included on the basic tier).

[54] NBA Comments, Exhibit 7 (report by Bortz & Company regarding the impact of superstation carriage of NBA games); NHL Comments at 18-19; MLB Comments at 9-15.

[55] MLB Comments at 12-15.

[56] *Id.* at 9-11.

[57] It would be helpful in subsequent rounds of this proceeding if commenters could submit ratings data applicable when two different games are shown on a local broadcast station and on a superstation at the same time.

[58] Turner Comments at 9-12. We note that superstations do compete with local broadcasters for national spot advertising.

[59] United Video Comments at 7-9. Turner similarly notes that annual compensation received by MLB from the compulsory license copyright pool for distant carriage of baseball exceeds $20 million and that MLB is also paid approximately $30 million annually by the individual teams for their baseball games to be televised beyond their respective regions. Turner Comments at 11.

[60] *Notice* at 1495.

[61] *See* NFL Comments at 8-9.

[62] *Id.* at 10, 16.

second half. Each cable network also receives the rights to three preseason games. The Pro Bowl, telecast by ESPN, is the only post-season game included in the cable contracts.[63]

25. The rights sold to CBS and NBC are non-exclusive (*i.e.*, the two networks air competing telecasts on Sunday afternoon), while the ABC and cable network rights are exclusive. All games, however, including those telecast by ESPN and TNT, are broadcast over the air in the home market of the visiting team and, if the game is sold out 72 hours in advance, in the home market of the home team.[64] NFL submits that because of the relatively limited number of home games that each NFL team plays, it is important to maximize attendance revenues, and asserts that the guarantee that all of the teams' road games will be brought back to the home market helps to promote the club locally and thereby bolster home attendance.[65]

26. With respect to the centralized control of television rights that is unique to professional football, NFL asserts that its ability to sell the rights for all of its teams is of significant benefit in controlling and limiting any potential future migration of programming. It also contends that centralized control ensures a competitive balance, in that more popular teams cannot obtain a more lucrative contract than other teams or dominate the broadcast stations so as to force less popular teams off of broadcast television and onto cable or pay-per-view.[66] Further, NFL submits that shared television revenue is the largest single source of revenue for NFL teams; in 1993, each NFL team will receive over $39 million from the network contracts, a sum that is projected to represent over 60 percent of the average team's revenue.[67]

27. The record indicates that professional football has experienced no migration, as all regular season and post-season games are shown on broadcast television. Charts 2 and 3 of Appendix C detail national broadcast and cable NFL telecasts since 1980. No commenter contends that professional football games have migrated from broadcast to cable television. Commenters agree with NFL that its current cable arrangements make games available nationwide that would otherwise have only been available on a regional basis.[68]

C. Professional Basketball

28. In addition to the general information requested pursuant to our inquiry, the *Notice* sought comment on the transfer of individual NBA games from local television to cable networks. The *Notice* also specifically requested information regarding the Philadelphia 76ers' pay-per-view package and documentation of changes over time in the exhibition of playoff games.[69]

29. Since 1980, the NBA regular season has consisted of 82 games, with each team playing 41 home games and 41 away games. The 27 NBA teams are divided into the Eastern Conference (Atlantic and Central Divisions) and the Western Conference (Midwest and Pacific Divisions).[70] There are four rounds of post-season play. Since the 1983-84 season, the first round has featured 16 teams -- the four Division winners and the six teams in each Conference with the next best records -- in eight best-of-five series. The Conference semifinals feature the eight first round winners in four best-of-seven series. The Conference finals feature the four semifinal winners in two best-of-seven series, and the NBA finals feature the two conference champions in a best-of-seven series.[71]

30. NBA has national contracts with NBC and TNT that began with the 1990-91 season and expire at the end of the 1993-94 season. Revenues from the NBC and TNT contracts are shared equally by all teams.[72] Pursuant to its contract with NBA, NBC is authorized to broadcast up to 61 games each season. These 61 games include between 17 and 26 regular season games (including the All-Star Game), between 19 and 28 playoff games, and all of the games of the NBA Finals. No telecasts may be licensed to any other national broadcast network and no team may televise any game by any means during the broadcast of a game by NBC. TNT is authorized to telecast at least 50 preseason and regular season games, certain special events related to the All-Star Game, and up to 30 games during the first three rounds of the playoffs. All games televised by TNT are also available for over-the-air broadcast or cablecast in the local markets of the competing teams, and all TNT cablecasts are blacked out on cable systems within a 35-mile radius of the city of operation of the home team. No NBA telecasts may be licensed to any other national cable network and no superstation game may be telecast nationally on the same night that TNT telecasts an NBA game.[73]

31. With respect to local telecasts, each NBA team is permitted to broadcast or authorize broadcast of its games within the team's home state or within 150 miles of the team's city of operation, provided that no station carrying the team's games is located within another team's territory. Each team is also permitted to authorize the telecast of its games via cable or satellite within 75 miles of the team's city of operation. Beyond 75 miles, regional cable or sat-

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[63] *Id.* at 10-13, 16, 20-21. ESPN notes that NFL games are the highest rated programs carried on ESPN. ESPN Comments at 7.

[64] *Id.* at 9-10, 13-14, 16.

[65] *Id.* at 29-30.

[66] *Id.* at 23-24.

[67] NFL submits that the total value of its five television contracts is approximately $3.6 billion in terms of rights fees. *Id.* at 16-17.

[68] NFL Comments at 18; ESPN Comments at 7-8; NCTA Comments at 19-20; Turner Comments at 5.

[69] *Notice* at 1495.

[70] NBA Comments at 7. From 1980-81 through 1987-88, there were 23 NBA teams. There were 25 teams in 1988-89, and there have been 27 teams since 1989-90. *Id.* at 8.

[71] *Id.* at 9-10. Prior to the 1983-84 season, the first round of playoffs featured the four teams from each Conference with the best records, excluding the Division champions, in four best-of-three series. The second round featured eight teams -- the four first-round winners and the four regular season Division champions in four best-of-seven series. The third round featured the four semifinal winners in two best-of-seven series, and the fourth round, the NBA finals, featured the two Conference champions in a best-of-seven series. *Id.* at 7-9.

[72] NBA notes that it has been reported publicly that NBC agreed to pay $601 million to the NBA for the rights it purchased and that TNT agreed to pay $275 million. NBA Comments at 12. NBA also notes that on average for the 1991-92 regular season, total broadcasting income (including national broadcast and cable, local and regional broadcast and cable, local radio and other broadcast income) accounted for 43.2 percent of revenues. Gate receipts accounted for 41.9 percent of revenues, and other sources of income accounted for the remaining 14.9 percent of revenues. *Id.* at 17-18.

[73] *Id.* at 12-13.

ellite distribution is permitted as long as the telecaster enters into an agreement with the NBA. NBA expects that during the 1992-93 regular season, teams will broadcast from 1 to 41 games on local over-the-air television and from zero to 74 games on local or regional cable. NBA submits that there were 736 local/regional broadcasts and 922 local/regional cablecasts during the 1992-93 regular season. *See* Appendix C, Chart 6. In addition, some local NBA flagship stations are also superstations and thus will distribute games locally over the air and nationally via cable. NBA submits that in 1992-93, WTBS will carry 30 Atlanta Hawks games, WGN will carry 30 Chicago Bulls games and WWOR will carry 10 New Jersey Nets games. These games may be blacked out in the home team's local area if the team is not broadcasting the game locally over the air.[74]

32. INTV expresses concern regarding migration of local NBA games from broadcast to cable television. INTV asserts that while the number of NBA games appearing on local television stations has increased in the aggregate, this is largely due to expansion of the league. INTV submits that games appearing on pay cable channels has increased from 540 games in 1985-86 to 750 games in 1989-90. Specifically, INTV notes that a Philadelphia station broadcast 42 76er games in 1988, 1989 and 1990, but has broadcast only 10 games since the 1991-92 season, as the remaining games have gone to PRISM, a pay cable channel.[75] INTV notes that beginning with the 1994-95 season, all 76er games will be on PRISM or SportsChannel, another cable sports network. INTV contends that the broadcast station was willing to pay rights fees but that PRISM outbid the station.[76] Further, INTV asserts that broadcasts of Knicks games have dropped from 27 in 1989-90 to two in 1991-92, and that broadcasts have also decreased in Boston.[77] Similarly, the New York City Department of Communications and Energy argues that the overwhelming majority of regular season games of the New York Knicks have been shown exclusively on the Madison Square Garden Network; NYC submits that only two Knicks games during the 1991-92 season could be watched over broadcast television.[78] In this regard, Tribune notes that WPIX has been offered the rights to broadcast Knicks games as a package together with New York Rangers hockey games, and that WPIX has declined because it is only interested in Knicks games.[79]

33. On the other hand, NBA and other commenters contend that cable has supplemented broadcast coverage of NBA games to the benefit of the league and the public. NBA submits that in the late 1970s and early 1980s, NBA games were frequently played to half-empty arenas, that several teams were on the verge of financial collapse, and that there was little interest in NBA basketball as a television attraction. NBA asserts that it was able to enhance interest in NBA games through use of broadcast television along with other media.[80] Madison Square Garden Corp. contends that in the mid-1980s, WWOR's interest in broadcasting the Knicks diminished due to low ratings and that WPIX, the only other available VHF independent, was not interested in televising the games. It notes that MSG Network subsequently picked up the Knicks games previously televised by WWOR.[81] NCTA asserts that broadcast coverage has increased over the last five years and that the majority of NBA games made available to cable are home games, which are not typically shown on local stations.[82] Turner notes that the broadcast networks predominantly carry weekend games, while TNT's primary NBA coverage is of Monday through Friday games, which were not previously available on network television. Thus, it argues, the number of regular season games available to fans has increased rather than fallen.[83] Similarly, ARC, which owns regional sports channels, submits that local broadcasters have continued to air a substantial number of NBA games while the regional sports networks have expanded the number of televised games.[84]

34. It does not appear from the data submitted that professional basketball has migrated from broadcast to cable television to a significant extent, either at the national or local level. Charts 4 and 5 of Appendix C detail national NBA telecasts since 1980, and Chart 6 includes data regarding local NBA telecasts since 1981. Chart 4 estimates that an all-time high of regular season games will be broadcast nationally in 1992-93 (25 games), and Chart 5 shows that post-season national broadcasts increased from a low of 19 in 1982-83 to a high of 28 in 1991-92. Local broadcasts of regular season games have also increased. Chart 6 shows a low of 465 regular season games broadcast in 1982-83 and a high of 736 games broadcast in 1992-93. Local post-season broadcasts have been less steady. Chart 6 shows a high of 60 post-season broadcasts in 1983-84, the first year of the expanded playoff format, as compared with 47 local post-season broadcasts last year, and a low of 44 post-season games broadcast in 1985-86 and 1988-89, due at least in part to shorter series in those years. While the expansion of the league may account for some increase in the number of games, removal of games played by expansion teams would not affect the data so as to raise concerns that professional basketball is in danger of migrating away from broadcast television.

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[74] *Id.* at 13-15.

[75] NBA notes that no 76ers games are distributed on a pay-per-view basis as indicated in the *Notice*. Rather, the 76ers games are carried in Philadelphia by WPHL and by PRISM/SportsChannel. NBA submits that during the current season, seven 76ers games are scheduled for WPHL, 13 for SportsChannel Philadelphia (basic cable), and 61 for PRISM (pay cable). NBA Comments at 16.

[76] NBA specifically disputes INTV's claim that all 76er games will be on PRISM as of 1994. It argues that there is no reason to believe that 76er games will not continue to be shown by the current broadcaster or another broadcast station. *See* NBA May 6, 1993, Supplemental Comments at 1.

[77] INTV Comments at 27-28; INTV Reply at 36-37. Conversely, NBA argues that the Knicks were not carried at all on local broadcast television in 1989-90, and that the number of Celtics broadcasts has not declined. *Id.* at 1-2.

[78] NYC Comments at 3-4.

[79] Tribune Comments at 4-5.

[80] NBA Comments at 3-4.

[81] MSG Comments at 5-10; *accord* NBA May 6, 1993, Supplemental Comments at 1-2.

[82] NCTA Comments at 17-19.

[83] Turner Comments at 4-5.

[84] ARC Comments at 6-7.

D. Professional Baseball

35. In addition to general data regarding Major League Baseball, the *Notice* requested comment on plans for future national cable carriage. We also sought comment on the decline over the last several years in the number of MLB games on the national broadcast networks and the shift of games of individual teams from a local television station to a regional cable network.[85]

36. Major League Baseball is divided into two leagues, the National League and the American League. Each league consists of 14 teams, split into Eastern and Western Divisions of seven teams each. Each team plays 162 games during the season, of which 81 are home games and 81 are away games. An All-Star Game is played at mid-season. At the end of the regular season, the top teams in the 2 divisions in each league compete in best-of-seven series for the league championships, and the league champions meet in the best-of-seven World Series.[86]

37. This season, 16 regular season Saturday afternoon games, the All-Star Game, and all post-season games will be broadcast nationally on CBS. MLB notes that in 1980, NBC and ABC combined to present 42 national broadcasts of regular season games.[87] ESPN will telecast additional regular season games. MLB notes that the national cablecasting of baseball originated in 1980, when the USA Network presented approximately 40 baseball telecasts during 1980, 1981, 1982 and 1983. From 1983 through 1989, there were no national cable telecasts of baseball games, and in 1989 baseball entered into an agreement with ESPN. MLB submits that ESPN has provided more than 150 games per year during 1990, 1991 and 1992, and has presented a number of updates and other baseball related features each season. MLB also asserts that ESPN has presented a daily program devoted exclusively to reporting baseball events.[88] In addition, regular season games are available nationally via superstations.[89]

38. With respect to local telecasts, each MLB team arranges to televise a portion of its regular season games locally on a broadcast station. Typically, the team licenses telecasting rights to this "flagship" station, although some teams purchase time on the flagship station and arrange for the production of telecasts themselves. MLB submits that in 1993, teams will present 1,705 local broadcasts, an average of 65 games per team.[90] Further, MLB notes that many teams and their flagship stations have established regional broadcast networks that rebroadcast the flagship station's games. In 1992, 20 of the 24 U.S. teams had regional networks, consisting of 185 broadcast stations in addition to the teams' flagship stations. By comparison, 110 broadcast stations were involved in regional baseball networks in 1979.[91]

39. MLB notes that while the Cubs and the Braves televise a number of home games over their flagships, which are also superstations, the remaining 24 U.S. teams will broadcast, on average, only 12 of their 81 home games in 1993, so as not to interfere with home gate receipts.[92] Accordingly, during the 1993 season, 20 of the 26 U.S. teams will present a total of 1,206 games over regional cable sports networks, many of them home games.[93] MLB submits that as of September, 1992, there were nearly 37 regional cable networks available to approximately 40 million subscribers. MLB asserts that approximately 59 percent of cable systems offer such networks as part of a basic tier, 32 percent offer then on expanded basic and the remaining 9 percent offer them as premium channels.[94]

40. MLB contends that there has been no migration of professional baseball from broadcast television to cable. MLB asserts that as a result of declining ratings for national MLB telecasts, the broadcast networks have concluded that it has become economically less viable to maintain historic levels of national baseball telecasting.[95] However, MLB contends, local MLB broadcasts have increased since 1980. MLB submits that the 24 U.S. teams that operated in 1980 will present 1,584 flagship broadcasts in 1993, as compared with 1,392 in 1980. It also submits that each team will broadcast an average of 40 percent of its games in 1993, as compared with 36 percent in 1980. MLB asserts that local over-the-air telecasts lead to widespread exposure and fan support, which is a critical element in promoting attendance. Nonetheless, MLB contends that stations affiliated with a national broadcast network generally have less interest in televising baseball because of their commitments to televise network programming.[96]

41. INTV submits that migration of MLB games has occurred and will continue. INTV contends that in 1990, the number of nationally televised regular season games dropped from approximately 40 games to 16, and that network broadcasting of MLB games remains at this level.[97] Further, INTV submits, pursuant to ESPN's contract, all

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[85] *Notice* at 1495.

[86] MLB Comments at 4. Recently, MLB reached an agreement with ABC and NBC that will change the post-season structure beginning in 1994 so as to add an additional round of playoffs. These "wild card" playoff games, which will all be shown on broadcast television, reportedly could add up to 20 games to the post-season schedule. The new agreement will also eliminate national coverage of the American and National League Championship Series. These games will instead be aired on a regional basis. *See* Wall Street Journal, May 10, 1993, at B1. Press reports indicate that the MLB owners have ratified this agreement. In Section VII, *infra*, we seek further information on the new MLB national broadcasting contract and its predicted effect on regular season and post-season MLB telecasts.

[87] MLB Comments at 15-16.

[88] *Id.* at 20-22. The contract between MLB and ESPN is currently being renegotiated. It appears that ESPN may air fewer games in future seasons. We request further information about ESPN's plans in Section VII, *infra*.

[89] *Id.* at 5.

[90] *Id.* at 3, 6-7.

[91] MLB Comments at 11-12.

[92] *Id.* at 7-8.

[93] *Id.* at 18.

[94] *Id.* at 17-19.

[95] *Id.* at 15-16. MLB submits that ratings for Saturday afternoon games broadcast on NBC from 1983 through 1989 fell from a high of 6.1 in 1984 to 5.0 in 1989. It asserts that ABC's broadcast of prime time games achieved a 10.0 rating in 1984, which declined to an 8.1 rating in 1988. MLB further notes that in 1990, the initial year of the CBS contract, average ratings for Saturday afternoon games were 4.7; it submits that the average rating fell to 3.4 in 1992. MLB also asserts that post-season broadcast ratings have declined, but notes that ratings for the World Series have remained fairly steady. *Id.* at 16 nn.8-9.

[96] *Id.* at 6-8.

[97] INTV Comments at 17-19.

teams are prohibited from permitting off-air broadcast of any game on Wednesday nights, which it argues had been the most popular night for baseball broadcasts. It notes that the exclusivity provision only applies to broadcast stations, so that Wednesday night games may be shown on pay cable channels. It also expresses concern that ESPN will attempt to obtain exclusivity on other nights.[98] In addition, INTV submits that the development of local cable sports channels has been instrumental in reducing the broadcast schedules of particular teams, some by as many as 50 games.[99] INTV notes, for example, that 60 games were shown on broadcast TV in Milwaukee in 1983. Upon creation of a cable sports channel in 1984, the number of games declined to 38. Since that time, no cable channel rights have been sold and the number of broadcast games has increased to 65. INTV similarly contends that broadcast TV showings have increased in Kansas City, Seattle and St. Louis, markets with no cable sports channels.[100]

42. Similarly, the New York City Department of Telecommunications and Energy contends that a number of Yankees and Mets games are now shown on regional cable networks.[101] Indeed, the arrangement between the New York Yankees and WPIX appears to be one of the most contentious arrangements regarding local baseball telecasts. MLB notes that in 1980, the Yankees broadcast 100 games over WPIX and that in 1993, they will broadcast 50 games over WPIX. It contends that the Yankees are an exception to the general rule that baseball teams have maintained or increased their flagship telecasts during the past decade.[102] MSG Corporation submits that in 1988, MSG Network was given the rights for all Yankee games for 12 years and that it subsequently reached an agreement with WPIX whereby WPIX was permitted to telecast 55 games in 1991 and 50 games in 1992 and 1993.[103] Tribune, which owns WPIX, submits that broadcast television could not support a deal of the financial magnitude of the MSG/Yankees arrangement.[104]

43. On the other hand, a number of commenters agree with MLB that migration of baseball from broadcast to cable is not a concern. For example, ESPN submits that its contract with MLB has limited exclusivity provisions applicable only on Wednesday nights and does not diminish local broadcast coverage. It asserts that the number of local over-the-air telecasts reached an all-time high in 1991 (1,674 games) and will exceed that in 1993 (1,691, not accounting for the new expansion teams).[105] MLB concurs that ESPN's Wednesday exclusivity, which prohibits teams from authorizing over-the-air broadcasts after 4:05 pm, has not affected the number of over-the-air broadcasts of baseball games. MLB further disputes INTV's argument that Wednesday had been the most popular night for baseball broadcasts, and contends that more broadcasts were presented on Friday and Tuesday.[106] NCTA argues that ESPN's entry into baseball has benefitted consumers by bringing more games at more times to national TV and by offering coverage to teams and parks that might not otherwise receive wide national exposure. NCTA also contends that local broadcast coverage of baseball has increased by 11.5 percent in the past five years, and that the games shown on cable tend to be home games, which would typically be unavailable to local broadcasters.[107]

44. There has been a pronounced decline in the number of regular season baseball games broadcast nationally since 1980, as INTV suggests. It does not appear, however, that this decline is the result of migration to cable. Rather, as a number of commenters argue, the networks' decision to broadcast fewer games seems to be based on declining ratings. Chart 7 of Appendix C shows that from 1980 through 1990, when ABC and NBC had the rights to broadcast MLB games nationally, the networks broadcast between 46 and 68 regular season games. Average ratings for those games declined from a high of 8.7 in 1982 to a low of 5.6 in 1989. CBS broadcast 16 regular season games per year in 1990, 1991 and 1992 with lower ratings each year, ultimately reaching a low of 3.4 in 1992. On the local level, Chart 8 shows that while the number of MLB games shown on local cable channels has increased threefold, the number of games shown on broadcast television has remained fairly steady -- 1,654 games were broadcast locally in 1980 as well as 1992. This appears to support the argument of several commenters that the majority of games shown on local cable television are games that were not previously broadcast. Nonetheless, while an overview of MLB telecasting practices does not suggest wholesale migration, the record shows some instances of migration at the local level -- for example, the New York Yankees' shifting of some games to MSG Network. The Commission will continue to closely monitor these situations.

E. Professional Hockey

45. In addition to the general information sought in the *Notice*, we requested information regarding the television packages of the Minnesota North Stars, Chicago Blackhawks and Pittsburgh Penguins. We also inquired as to the reasons for the lack of national NHL coverage.[108]

46. NHL submits that it consists of 24 teams, 16 in the U.S. and 8 in Canada. The league is divided into the Wales Conference (Adams and Patrick Divisions) and the Campbell Conference (Norris and Smythe Divisions). In the 1992-93 season, each team played 84 regular season games, 41 at home, 41 away and two in a non-NHL city. From 1981-82 through the present, the top four teams in each division have earned playoff berths. In each division, the first place team plays against the fourth place team and the second place team against the third place team in the Division Semi-Finals, which has been a best-of-seven series since 1986-87. The two winners then play in the Division Finals, a best-of-seven series. The two winners in each conference then play in a best-of-seven Conference Final. The two conference winners then compete for the Stanley Cup.[109]

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98 *Id.* at 19-20; *see also* ESPN Reply at 28-30.
99 *Id.* at 21-25.
100 INTV Reply at 31-34.
101 NYC Comments at 5.
102 MLB Comments at 9-10.
103 MSG Comments at 12-14.
104 Tribune Reply at 2-3.
105 ESPN Comments at 8-9.
106 MLB Comments at 8, 9 n.7, 22-23.
107 NCTA Comments at 15-16.
108 *Notice* at 1495.
109 NHL Comments at 9-11.

47. NHL submits that professional hockey is currently distributed through local broadcasts and cablecasts, superstation telecasts, national network cablecasts and pay services. The NHL has not had a national broadcast network TV contract in over a decade, although the All-Star game has been carried by NBC for the last four years. NHL submits that its lack of national network coverage is not at the league's volition, and that the networks dropped hockey in 1976 citing poor ratings. This year, a package of five NHL playoff games will appear on network television (ABC). NHL asserts that the inability to gain broadcast exposure has forced both the league and its teams to seek alternative distributors. NHL recently entered into an agreement with ESPN for five seasons (including 1992-93) whereby ESPN will telecast 25 to 27 regular season games on its primary channel, plus an agreed upon number of additional specially selected games, an undetermined number of games from playoff rounds one and two, and all Conference Championship and Stanley Cup Final games. A limited number of playoff games will also be broadcast on network TV in each of the five seasons.[110]

48. Individual teams license local telecasts, while the NHL licenses all national telecasts. Current NHL rules permit each team to telecast its games within a 50 mile radius of the municipality in which it plays. If there are fewer than 2,300,000 total households within that radius, the team may telecast beyond that radius as necessary to reach 2,300,000. No team may broadcast into another team's home territory when that other team is playing at home. Further, NHL rules provide that when a game is nationally cablecast, the home territories of both teams shall be blacked out on that national cablecast, although the competing teams may distribute the game in their respective markets.[111]

49. NHL argues that other than in New York and Hartford, where the team's flagship station went off the air, the number of regular season games broadcast in 1992-93 exceeded that of 1981-82.[112] With respect to the specific teams mentioned in the *Notice*, NHL submits that none of the pay packages of the Minnesota North Stars, the Chicago Blackhawks or the Pittsburgh Penguins constitute migration. While the Minnesota North Stars made the NHL playoffs in 1989-90, 1988-89 and 1985-86, they did not advance beyond the first round until the 1990-91 season. NHL asserts that none of the North Stars' regular season home games were shown on over-the-air television in 1990-91, so home playoff games could not be said to have migrated to pay television later that year, as is argued by some commenters. Moreover, NHL notes, home games were likewise not shown over-the-air in the other years that the North Stars made the playoffs, and all away playoff games were shown locally on broadcast television in 1986, 1989, 1990 and 1991. NHL contends that the parties attempted to reach an agreement to put the home playoff games on broadcast TV in 1991 but were unable to come to terms.[113]

50. Further, NHL notes that in 1992, the Chicago Blackhawks telecast their home playoff games on SportsChannel Chicago. NHL submits that because home playoff games had not been cablecast in the previous seven years and had not been broadcast over the air in 12 years, their appearance on pay television in 1992 does not constitute migration.[114] NHL also asserts that the six regular season Penguins games shown on pay television in 1992-93 would otherwise not have been telecast because they were home games.[115] The charts appended to the NHL comments show that no Penguins home games had previously been telecast over-the-air or on local cable during the years in question (*i.e.*, 1980-present).

51. INTV and the New York City Department of Telecommunications and Energy contend that there has been significant migration of hockey from broadcast to cable television. INTV asserts that according to NAB's 1990 sports survey, the number of games appearing on broadcast television declined 7.4 percent from 1986 to 1989 and the number of games appearing on local and regional cable channels increased 29.3 percent.[116] In addition, NYC notes that many regular season games of the New York Knicks and the New York Rangers have been shown exclusively on the Madison Square Garden Network since the network's inception in 1969.[117]

52. Other commenters, however, argue that broadcasters are not interested in professional hockey and that cable offers the NHL visibility that would not otherwise be provided via broadcast television. For example, ESPN submits that it has provided hockey with substantial national exposure, and notes that it has purchased time on ABC to distribute five Stanley Cup playoff games this year.[118] NCTA similarly asserts that cable provides access to NHL games that have been long ignored by the broadcast networks.[119] Time Warner agrees that professional hockey is often not carried on broadcast television, and suggests that the lack of coverage is due to the proliferation of sports events during the fall and winter months.[120] ARC contends that viewer interest in hockey and, consequently, the interest of local broadcasters in carrying hockey, vary widely among different regions. ARC asserts, for instance, that the Tampa Lightning could not reach a rights agreement with any local broadcaster and instead made an arrangement with an ARC affiliated cable sports network.[121] Madison Square Garden Corp. contends that WWOR's interest in the Rangers diminished in the mid-1980s due to low ratings and that since WPIX was also not interested, Madison Square Garden Corp. picked up the additional Rangers games.[122] Tribune concedes that MSG offered its affiliate,

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[110] *Id.* at 5, 12, 16.

[111] *Id.* at 11-13. NHL further submits that in recent years, national and local broadcast revenues have accounted for less than six percent of NHL revenues and that 18 percent of revenues come from non-broadcast media sources such as cable. *Id.* at 18.

[112] NHL Reply at 7.

[113] NHL Comments at 14-15; NHL Reply at 7-8.

[114] *Id.* at 15.

[115] *Id.* at 16.

[116] INTV Comments at 25-26.

[117] NYC Comments at 3-4.

[118] ESPN Comments at 9. Those five games were broadcast live on Sunday afternoons, beginning April 18, 1993, and ending May 16, 1993. The first three weeks consisted of regional coverage of various games and the fourth and fifth weeks each consisted of a single national game. *See* NHL May 24, 1993, Supplemental Comments at 3-4.

[119] NCTA Comments at 5.

[120] Time Warner Comments at 14-20.

[121] ARC Comments at 7. ARC notes that the Lightning required that the cable sports network arrange to have at least 10 Lightning away games aired on broadcast television. *Id.* at 8.

[122] MSG Comments at 5-10.

WPIX, the rights to telecast Rangers and Knicks games as a package, and asserts that WPIX declined because it was only interested in Knicks games.[123]

53. The record shows that professional hockey has not been broadcast on national television since before 1980, the starting point of our survey, except that the All-Star Game has been broadcast on NBC since 1990 and a few playoff games were televised on ABC this year.[124] It therefore cannot be said that hockey has migrated from broadcast to cable on the national level. Indeed, it is questionable whether NHL games would have a national outlet absent the growth of cable television. Chart 9 of Appendix C details national cable telecasts of NHL games since 1980. With respect to local telecasts, Chart 10 shows a 14 percent decline in games broadcast between 1981-82 and 1992-93; 324 games were broadcast in 1981-82 and 279 were broadcast in 1992-93. It is unclear from the record whether this decline of 45 games is due to the expansion of national and local NHL cablecasts or is entirely attributable to low ratings; local ratings data would be helpful. In any event, we do not consider this slight decline a cause for concern. Another factor that may contribute to the lack of national NHL exposure and the decline in the number of local NHL broadcasts is the fact that hockey is played at the same time as far more popular sports. As such, NHL games appear to have difficulty competing for audience with professional football, professional basketball, college football, college basketball and other events occuring during the fall and winter months.

F. College Sports

1. In general

54. The *Notice* requested data regarding the video distribution of college football and basketball since 1980. Specifically, the *Notice* sought information regarding scheduling, live versus tape-delayed telecasts, ratings, contract terms, conference objectives, television revenues and gate receipts.[125] In general, most collegiate commenters assert that cable television coverage of collegiate athletics has not led to a decrease in broadcast coverage. Rather, they argue, cable has expanded the number and variety of collegiate events available to the public and in many cases events have been cablecast that would not otherwise have been shown on broadcast television.[126] For example, the University of Pittsburgh submits that since ESPN has begun televising college football, its team has made 22 national appearances that would probably have not otherwise been telecast nationally. The University of Pittsburgh further notes that its basketball team has averaged four to five live appearances per year on ESPN since 1982, and that its contract with a regional cable sports channel calls for the live telecasting of 18 to 20 men's basketball games per year and four other varsity sports events of the University's choosing.[127] ECU similarly argues that the popularity of college basketball has increased due to ESPN exposure.[128]

55. With respect to revenues, NCAA submits that 1989 ticket sales for Division I institutions with football programs represented approximately 35 percent of athletic department revenues, and that revenues from bowls, tournaments and television represented 14 percent of athletic department revenues. NCAA asserts that television revenues represented a smaller proportion of revenues for Division I institutions without football and for institutions in other Divisions. NCAA believes that there is some relationship between broadcast exposure and gate receipts, but contends that gate receipts are more affected by the win/loss record of the team.[129] NCAA further submits that the Commission's assumption that sports entities seek to maximize their overall net revenues is more directly applicable to professional sports, and asserts that the primary concern of college athletics is often with the publicity that results from media carriage of events.[130] BYU estimates that approximately 17 percent of its athletic department revenue is generated by the sale of broadcast rights, and ECU submits that television coverage of its games has not reduced gate receipts.[131] The University of Pittsburgh anticipates that for the 1993-94 season, approximately 27 percent of its Athletic Department revenue will come from the sale of broadcast or other media distribution rights. It also states that football gate receipts will account for approximately 25 percent of the department's income, while basketball gate receipts will be about 10 percent of the total.[132]

2. College football

56. The promotion and regulation of college football is primarily governed by the NCAA. NCAA institutions sponsor approximately 600 football teams, classified as Division I-A, I-AA, II or III. NCAA submits that there are 107 Division I-A institutions, 88 Division I-AA institutions, 129 Division II institutions and 229 Division III institutions. The NCAA football schedule typically includes 11 games held on Saturdays from early September through late November or early December. Generally, home and away games are divided evenly during the regular season and neutral sites are used for the final round of competition. For Division I-A football, post-season play consists of 18 bowl games coordinated by a coalition of 5 conferences, 4 bowls and one additional university. NCAA does not sponsor a Division I-A football championship. For Divisions I-AA, II and III, the NCAA sponsors national championships whereby 16 conference champions in each Division participate in single-elimination tournaments.[133]

57. NCAA has no involvement in the television contracts for regular season football games. Rights to in-season intercollegiate athletic events are marketed by individual institu-

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[123] Tribune Comments at 4-5.

[124] NHL indicates that data regarding national broadcasts are not available for the 1980-81, 1981-82 and 1982-83 seasons. It is therefore possible that additional games were broadcast nationally during those years.

[125] *Notice* at 1495-96.

[126] *See, e.g.*, ACC Comments at 1; BYU Reply at 1; CAA Comments at 1-3; CAC Comments at 1-3; Colorado State Comments at 1-3; Southland Conference Comments at 1-3; Southwest Conference Comments at 2; University of Denver Comments at 2-3; UIL Comments at 2; University of Pittsburgh Comments at 1-2.

[127] University of Pittsburgh Comments at 1-2.

[128] ECU Reply at 1.

[129] NCAA Comments at 15-18.

[130] *Id.* at 4-5.

[131] Brigham Young University Reply at 1; ECU Reply at 1.

[132] University of Pittsburgh Comments at 1-2.

[133] NCAA Comments at 8-12.

tions, conferences and other consortia.[134] The College Football Association is one such consortium. CFA, which acts as a program packager for 67 universities, consists of seven constituent groups involving six conferences and other schools that do not belong to a conference.[135] Each constituent group appoints a representative to serve on the CFA Television Committee, which drafts a voluntary Television Plan. The current CFA Television Plan provides that ABC and ESPN have a right 8 of first refusal for games played by CFA members. The CFA contracts with ABC and ESPN cover the 1991 through 1995 seasons. CFA will receive $300 million -- $175 million from ABC and $125 million from ESPN. CFA estimates that in 1993, ABC will televise 35 games and ESPN will televise 27 games. ABC is permitted to televise a minimum of 25 and a maximum of 35 games each season, and ESPN has the right to televise 27 or 28 games per season. There are no home blackout restrictions in either contract.[136]

58. Rights to games not selected by either ABC or ESPN revert back to the institution. CFA member institutions are permitted to televise their games without geographical restriction provided that the games begin not later than 12:10 PM local time (with the exception that such games may not be sold to CBS, NBC or Fox Network). In addition to the opportunity to telecast games live, CFA members may show their games on a delayed basis on Saturdays beginning at 11 PM EST. CFA members may also arrange to telecast games on a point-to-point basis serving the home markets of the participating teams, and on pay-per-view or closed circuit at other times during the day, including those time periods when ABC or ESPN may be televising games from the CFA package. CFA submits that four conferences have arranged for a televised package in cooperation with syndicators -- the Atlantic Coast Conference, Big East Conference, Southeastern Conference and Southwest Conference, and that a number of individual CFA members have made arrangements to telecast games on a local or regional basis.[137]

59. Unlike their arguments regarding other sports, commenters that take issue with the current distribution of college football games do not contend that games previously broadcast have migrated to cable. Rather, commenters' primary argument with respect to migration of college football telecasts is that preclusive contracts severely limit the number of college football games broadcast by local over-the-air television stations.[138] These preclusive contract issues are discussed in detail in Section IV, *infra*.

60. Another matter potentially related to the migration of college football from broadcast to cable television is the recent ABC pay-per-view experiment with Showtime Event Television. CapCities/ABC notes that for the 1992 season, it made regional college football games available on a pay-per-view basis in areas where such games would not otherwise be seen on broadcast television. CapCities/ABC argues that it endeavored to select the game for over-the-air broadcast that would have the greatest local appeal, and asserts that the intent of the pay-per-view plan was to broaden viewers' programming choices.[139] Viacom, the parent company of Showtime Event Television, submits that the arrangement will provide ABC a new revenue stream with which to produce additional packages of games. Viacom contends that participating schools also benefit from a new revenue stream, as well as from the opportunity to nurture relationships with geographically dispersed alumni.[140]

61. Apart from the above two issues, it appears that there is limited concern that college football has migrated from broadcast to cable. Indeed, NCTA asserts that while national and regional cable networks cover a variety of college football events, the broadcast networks still dominate the major collegiate conferences, receive the first choice of nationally televised games and retain the rights to the major Bowl games. NCTA also argues that college football telecasts have increased in recent years. It submits that as individual schools began to negotiate their own rights contracts in 1984, sports syndicators and local broadcasters were flooded with available games.[141] Subsequently, NCTA asserts, because the large number of games on television was apparently reducing ticket sales and television ratings, the number of televised games in syndication declined from about 190 in 1984 to 100 in 1986 and 1987. Recently, however, NCTA submits, national broadcast coverage of college football has increased from 27 games in 1987 to 67 games in 1992, and national and regional cable coverage has increased from 54 games in 1987 to 192 in 1992.[142]

62. Commenters also contend that cable coverage of college football games supplements broadcast coverage. For example, Big East states that it has sought cable carriage in areas where it has difficulty securing broadcast coverage, and that it gives priority to broadcast coverage of its "Game of the Week."[143] Viacom submits that its affiliate, Prime Sports, telecasts live Pac-10 games that are not part of the Pac-10 broadcast agreement and tape-delayed replays of other games. Prime Sports also offers a four-game package of football games from the Big Sky Conference, which Viacom believes were not previously available on broadcast television.[144] Southwest Conference notes that the television rights for games that are not covered by the CFA agreement are syndicated to broadcast stations and submits that those games are later tape-delayed on a cable sports network.[145]

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[134] *Id.* at 3 n.3. Rights to bowl games are marketed by bowl committees, although NCAA certifies bowl games as conforming to the conditions established by NCAA members. *Id.* NCAA submits that nine of this past season's bowl games were carried on national broadcast networks and eight were carried on cable sports networks. *Id.* at 12.

[135] The CFA membership list appended to the CFA Comments identifies the six member conferences as the Atlantic Coast Conference, the Big East Conference, the Big Eight Conference, the Southeastern Conference, the Southwest Conference and the Western Athletic Conference.

[136] CFA Comments at 1-2.

[137] *Id.* at 2-3.

[138] *See, e.g.*, INTV Comments at 6-17; INTV Reply at 9-24; *see generally*, Pappas Reply.

[139] CapCities/ABC Comments at 3-4.

[140] Viacom Comments at 3-4.

[141] In *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984), the United States Supreme Court invalidated the NCAA's football telecasting agreements on antitrust grounds.

[142] NCTA Comments at 20-22.

[143] Big East Comments at 5-6.

[144] Viacom Comments at 8.

[145] Southwest Conference Comments at 2-3.

63. Data regarding national college football telecasts are attached in Appendix C, Charts 11 and 12. Chart 12 shows that 27 college football games were nationally broadcast in 1987 and that 67 games were nationally broadcast in 1992, an increase of 148 percent. During the same period, the number of games shown on national cable television increased from 54 to 192 (256 percent). We have not received sufficient information to compile a complete chart regarding local college football telecasts. While a few teams have submitted specific data regarding the number of games broadcast on local television stations, we do not believe that we can draw any conclusions from that sporadic information. It would be helpful if we were provided aggregate data for the major conferences. For example, we believe that the total number of and ratings for CFA games telecast by local broadcasters and cable operators would be probative as to the existence and likelihood of migration of games from broadcast to cable, as would data from other conferences such as the Pac-10 and Big 10.

3. College basketball

64. The promotion and regulation of college basketball is primarily governed by NCAA, which classifies member institutions as Division I, II or III. NCAA member institutions sponsor approximately 800 men's basketball teams and 800 women's basketball teams; there are currently 299 institutions in Division I, 220 in Division II and 313 in Division III. The college basketball event most widely televised and which generates the most public interest is the NCAA championship tournament for Division I men's basketball. The single-elimination tournament consists of 64 teams; 30 of the 64 berths are reserved for conference champions, and the rest are selected by invitation. Pursuant to NCAA's contract with CBS, the first two rounds of the tournament are broadcast regionally by local CBS affiliates and subsequent rounds are broadcast nationally on the network.[146]

65. Because all the games of the NCAA men's basketball tournament are shown on broadcast television, it appears that there has been little or no migration of college basketball to cable. Indeed, some commenters contend that the NCAA tournament is an example of "reverse migration" in that early round games had previously been telecast on ESPN.[147] Commenters also argue that other college basketball events are primarily shown on broadcast television. For example, Big East asserts that more of its games are currently carried on broadcast television than were carried five years ago. It submits that Big East men's basketball games are televised pursuant to a three-tiered distribution plan -- (1) national and regional network telecasts on CBS; (2) some regular season games on ESPN; and (3) some regular season and post-season games available for distribution through the Big East Television Network, first to broadcast television and then to regional cable.[148] NCTA submits that the three broadcast networks maintain the first choice of basketball games involving the major college conferences in addition to the NCAA tournament.[149] Southwest Conference notes that its syndicator generally distributes weekend games to broadcast stations and weekday evening games to ESPN or a regional cable network.[150]

66. Data regarding national college basketball telecasts are attached in Appendix C, Charts 13 and 14. We have not received sufficient information to compile a complete chart regarding local college basketball telecasts. As in the case of college football, we need additional data regarding the total number of and ratings for local broadcasts and cablecasts of the more widely popular college basketball teams. For example, aggregate data regarding local telecasts of NCAA Division I-A games outside of the NCAA Tournament would greatly facilitate our analysis.[151]

G. Other Sports

67. The *Notice* invited commenters to address the telecasting of sports in addition to the four professional and two college sports that were the focus of our inquiry.[152] Cable and collegiate commenters submit that national and regional cable sports networks provide coverage of a wide variety of previously untelevised professional and amateur sporting events. Commenters specifically mention soccer, boxing, rodeo, golf, yacht racing, auto racing, lacrosse, volleyball, surfing, skiing, skating, bowling, tennis, horse racing, fishing and hunting, cycling, billiards, bodybuilding, women's basketball, smaller conference men's basketball and football, track and field, swimming and diving, wrestling, gymnastics, college baseball, college hockey, semi-professional hockey, softball, field hockey and various high school sports events.[153] In addition, commenters submit that cable networks present sporting news and commentary and other informational programs involving specific sports, fitness and outdoor activities.[154] Further, NCTA notes that ESPN has covered special events such as the NFL draft, Baseball Hall of Fame inductions and spring training.[155]

68. In addition, a number of commenters specifically mention the decline of professional boxing on broadcast television. CapCities/ABC agrees that boxing has essentially moved from broadcast to cable and other subscription services, but argues that boxing has a more specialized audience than the other sports listed in the *Notice* and that it does not have as extensive a history on broadcast television.[156] NCTA asserts that boxing was abandoned by broadcasters before the inception of cable networks, and argues that cable has brought regular coverage of boxing back to prime time.[157] Similarly, Time Warner submits that

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146 NCAA Comments at 8-11.

147 *See, e.g.*, NCAA Comments at 6; NCTA Comments at 22.

148 Big East Comments at 2-5.

149 NCTA Comments at 22-23.

150 Southwest Conference Comments at 3-4.

151 We note that the Big East Conference submitted data regarding Big East men's basketball games broadcast locally in 1987-88 and 1992-93. Big East submits that in 1987-88, 16 broadcast stations televised a total of 119 games, and in 1992-93, 15 stations televised a total of 146 games. Big East Comments at 4, Appendix A. It would be helpful to know the total number of Big East games played during those seasons.

152 *Notice* at 1493.

153 *See* ARC Comments at 12-16; ACC Comments at 3-4; Big East Comments at 5; MSG Comments at 21-22; NCTA Comments at 5; Southwest Conference Comments at 4; Time Warner Comments at 35-36; University of Pittsburgh Comments at 1-2; Viacom Comments at 9-10.

154 MSG Comments at 21; ARC Comments at 15-16.

155 NCTA Comments at 6.

156 CapCities/ABC Comments at 3 n.4.

157 NCTA Comments at 5.

while CBS and NBC will not air any fights in 1993 and ABC is scheduled to air five, HBO, ESPN, Showtime and USA will collectively telecast more than 70 fights.[158] Similarly, Viacom asserts that boxing is televised nationally on Showtime, HBO, USA and ESPN and locally on regional cable networks such as MSG Network, Sportschannel America, Sportschannel and Prime Ticket. Viacom submits that "big event" fights, which its Showtime Event Television offers on a pay-per-view basis, were previously shown on closed circuit television for a fee in a theater or arena.[159]

IV. PRECLUSIVE CONTRACTS

69. The 1992 Cable Act directs the Commission to "analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations."[160] The Act defines a "preclusive contract" as a contract that prohibits a local television station from presenting either a live local college event that is not carried live by any local cable system, or a tape-delayed local college event that is not carried, live or tape-delayed, by a local cable system.[161] We pointed out in the *Notice* that some contracts between collegiate athletic conferences and video programming vendors may effectively preclude local television stations from obtaining rights to broadcast local college football or basketball games not being telecast by the cable sports channel. The *Notice* requested information regarding contracts between college conferences and video programming vendors, including, if appropriate, the broadcast networks and individual broadcast stations. We also asked whether there is a significant connection between preclusive contracts and migration of games to cable, and sought comment on the economic and social consequences of preclusive contracts.[162]

70. Commenters' arguments regarding preclusive contracts focus on college football. INTV and Pappas Broadcasting contend that the video distribution contracts between the college football conferences, including the CFA member conferences, and ABC, ESPN and regional cable sports networks, effectively preclude local broadcasters from carrying college football games of interest to their viewers. NAB and East Carolina University also suggest that preclusive contracts have prevented the broadcast of certain college football games.[163]

71. The precise interplay between the various contracts is difficult to discern from the comments. In general, INTV submits that the major college football conferences, including the Big 10, Pac 10 and CFA, have entered into contracts with ABC and ESPN (which is owned by ABC) that reserve the most desirable time slots for ABC and ESPN telecasts and that prohibit conference members from televising games opposite ABC and ESPN telecasts. INTV contends that the net effect of these contracts is to prevent individual stations or groups of stations from contracting separately with individual schools to televise games of local or regional interest during the most popular Saturday afternoon viewing periods. Further, INTV argues, regional cable sports channels have made similar telecasting arrangements with various college athletic conferences. INTV notes that there are essentially two three-and-one-half hour windows for broadcasting games live on Saturday afternoons. It asserts that stations that are prevented from broadcasting games during those time periods by virtue of conference telecasting arrangements must convince the school to play the game during another time period, must show the game on a tape-delayed basis or must attempt to sublicense games from regional sports channels.[164]

72. Parties involved in exclusive contracts argue that they are not "preclusive" as defined by Section 26(c)(2), and that such contracts benefit all parties involved and the public. CapCities/ABC, CFA and ESPN submit that their football telecasting contracts are not preclusive because they permit broadcast stations serving the markets of the competing teams to televise games at any time, including during the exclusivity windows.[165] INTV contends, however, that this home market exception is of no value in that ABC and ESPN may select which games to telecast as late as 12 days prior to the game. INTV argues that 12 days' notice is not sufficient for a local station to produce and market a game.[166] Parties supporting exclusivity also contend that sports exclusivity provisions are common, that they enable program producers to provide a unique product to advertisers and the public and that they promote program quality and diversity.[167] In this regard, CapCities/ABC argues that by increasing the value of its telecasts to advertisers, exclusivity provisions enhance its ability to compete against cable in bidding for rights to other sports events.[168]

73. Further, CapCities/ABC contends that the term "video programming vendors" as used in the 1992 Cable Act refers to cable programming networks and not to broadcast networks. It submits that because all games televised pursuant to its contract with the CFA are shown on broadcast television, its contract cannot be said to constitute migration.[169] On the other hand, ARC asserts that the definition of video programming vendors should not be limited to cable networks. ARC contends that to the extent that broadcasters sell advertising and may negotiate for retransmission consent payments, they may be classified as video programming vendors for purposes of the statute. ARC argues that even if network broadcasters were outside the definition of video programming vendors, their contract practices are relevant to determining the reasonableness and competitive effects of cable networks' contract practices.[170]

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158 Time Warner Comments at 34-36.
159 Viacom Comments at 4-6.
160 1992 Cable Act, Section 26(c)(1).
161 *Id.*, Section 26(c)(2).
162 *Notice* at 1497.
163 *See*, INTV Comments at 6-17; INTV Reply at 9-24; Pappas Reply at 4-8; NAB Comments at 2-3; ECU Reply at 1.
164 INTV Comments at 7-9, 10 n.4.
165 CapCities/ABC Comments at 11; CapCities/ABC Reply at 1-2; CFA Reply at 1; ESPN Comments at 11.
166 INTV Reply at 14 n.20.
167 *See* CapCities/ABC Comments at 11-12; ESPN Comments at 10-11; University of Pittsburgh Reply at 2.
168 CapCities/ABC Comments at 12.
169 CapCities/ABC Comments at 7-9; CapCities/ABC Reply at 1-2.
170 ARC Comments at 11.

74. In order to properly carry out the directives of the statute, we believe it necessary to examine the contract practices of broadcasters as well as cable programmers. While CapCities/ABC is correct that the legislative history refers to "contracts between cable sports channels and college athletic conferences,"[171] the statute refers to "video programming vendors" without further categorization. We conclude that the term "video programming vendor" refers to any provider of video programming, not just cable entities, and therefore includes a broadcast network such as ABC.[172] We further note that the record of this proceeding indicates that the contracts with which broadcasters primarily take issue are those between ABC and the various college football conferences, particularly CFA. Broadcasters are also concerned about contracts between college football conferences and ESPN, which is owned by CapCities/ABC. Because broadcasters argue that these contracts have "artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations,"[173] such contracts are directly relevant to our Congressionally mandated analysis of preclusive contracts and will be carefully evaluated.

75. At this point, we do not have sufficient information to make specific recommendations to Congress regarding the existence, prevalence and legality of preclusive contracts. We do believe, however, that the issue warrants further investigation, and we intend to include it in our forthcoming *Further Notice of Inquiry*. It would be helpful for commenters to diagram how the various contracts operate. For example, the exact times of the CFA/ABC and CFA/ESPN exclusive windows are not apparent, although it is clear that they apply during the afternoon and early evening hours on Saturdays. The specific teams and conferences involved in exclusive contracts are likewise not apparent, nor is it clear how often teams from different conferences play each other and how the various exclusive contracts operate when teams from different conferences play each other.

76. In addition, it would be helpful for broadcasters to discuss their difficulty in acquiring rights to home games of local college teams separately from their experiences in acquiring rights to other games.[174] It appears that broadcasters are primarily concerned with the ability of ABC and ESPN to decide which games to telecast on 12 days' notice, which they argue effectively precludes them from broadcasting games of local teams. In informal discussion with Commission staff, proponents of the 12-day notice have argued that the arrangement provides ABC and ESPN with maximum flexibility to select the games and teams of most immediate interest, and that such scheduling flexibility benefits fans and schools by maximizing exposure to important games. They contend that in most cases, the games that will be chosen by ABC and ESPN are readily predictable long before the game is formally selected. In some cases, however, they submit that it may not become apparent until late in the season that a particular game may determine a conference champion or may affect national ranking. Broadcasters will be asked to address this argument in subsequent rounds of this proceeding. They will also be asked to make specific recommendations regarding how much advance notice is optimal to enable a broadcaster to coordinate and promote its telecast of a particular game.

77. Finally, in order to meet the statutory directive "to determine whether and to what extent such preclusive contracts are prohibited by existing statutes," we will seek further information to enable us to apply the "rule of reason" test applied by the U.S. Department of Justice to ascertain compliance with the antitrust laws.[175] In particular, we will seek information concerning the appropriate definition of the relevant product and geographic markets, the degree of market power possessed by the college leagues, the degree of market power possessed by the programmers, and whether preclusive contracts permit the achievement of efficiencies that could not readily be achieved in another manner. Such information will enable us to determine whether preclusive contracts limit or increase the quantity of sports programming telecast.[176]

V. THE FUTURE OF SPORTS PROGRAMMING

78. As we pointed out in the *Notice*, the legislative history of the 1992 Cable Act suggests that we should, to the extent possible, "project future sports carriage trends."[177] We therefore sought comment on factors affecting the future of sports programming, including new technologies, retransmission consent and the antitrust exemption.[178]

79. In general, cable and sports entities contend that broadcast television will continue to play a primary role in the distribution of sports programming. For example, NFL notes that its Commissioner has committed to Congress that the Super Bowl will remain on broadcast television through at least the year 2000, that no playoff game will be moved from broadcast television without timely notice to Congress, and that any pay-per-view experimentation will initially be conducted on a limited basis and will be designed to supplement the games available on the broadcast and cable networks.[179] Similarly, NBA submits that its Commissioner has assured Congress that broadcast television will remain the key method of distribution for NBA basketball, noting the promotional value of having events available to all television households.[180] Time Warner likewise predicts that the Super Bowl and World Series will remain on broadcast television as the result of their large mass audience appeal, as well as fan goodwill and political concerns, and that the current pattern of "broadcaster first" rights negotiations will continue, particularly at the na-

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171 *See* Committe on Energy and Commerce, U.S. House of Representatives, H.R. Rep. No. 102-628, 102d Cong., 2d Sess., at 125-26 (*House Report*).

172 We note that for purposes of Section 616 of the 1992 Cable Act, the term "video programming vendor" is defined as "a person engaged in the production, creation, or wholesale distribution of video programming for sale." 47 U.S.C. Section 536(b).

173 1992 Cable Act, Section 26(c)(1).

174 We note that there is dispute over what games should be considered "local." While the ABC and ESPN contracts define a local game as a home game involving a team whose school is based in the ADI of the broadcast station in question, INTV advocates a broader definition. *See* INTV Comments at 15-16.

175 *See Notice* at 1497-98.

176 *Id.*

177 *Notice* at 1492 (quoting *House Report* at 126).

178 *Notice* at 1496.

179 *Id.* at 22-23.

180 NBA Comments at 17.

tional level.[181] Other commenters, however, are concerned that several, if not all, major sports events currently shown on broadcast television will eventually migrate to a subscription service.[182] For example, CBS notes that HBO has just announced its desire to purchase a package of five or six regular season NFL games, and submits that some industry analysts contemplate a pay-per-view future for the daytime MLB championship games.[183]

80. *New technologies.* Few commenters specifically discuss the impact of emerging technologies on the video distribution of sports programming. Viacom submits that distributors using new technologies are willing to take risks that other distributors will not. Viacom asserts that the emergence of new technologies will ultimately increase consumer choice by offering viewers access to events that may have an appeal too limited to warrant carriage on an advertiser-supported medium.[184] NFL and NBA contend that emerging technologies such as wireless cable and direct broadcast satellites have the potential to offer substantially more programming choices to consumers, but they reiterate their intention to continue to distribute games via broadcast television.[185] NAB submits that perhaps the greatest threat to broadcasters is posed by technological advances that will dramatically increase cable channel capacity which, in turn, could escalate the potential for pay-per-view telecasts.[186]

81. *Retransmission consent.* A number of commenters believe that retransmission consent revenues provided by virtue of Section 6 of the 1992 Cable Act may enable broadcasters to better negotiate with cable entities for the purchase of sports programming rights.[187] Section 6 permits broadcasters to elect retransmission consent or must-carry status in their local markets and, if they elect retransmission consent, to 8! negotiate compensation for cable carriage.[188] Some commenters further submit that broadcasters' bargaining power is enhanced by the must-carry, programming access, rate regulation and ownership provisions of the 1992 Cable Act.[189] INTV, however, doubts that retransmission consent fees will significantly benefit broadcasters in the sports programming context. It contends that many of the stations seeking to acquire sports programming are independents, and are thus unlikely to obtain significant retransmission consent fees. INTV also argues that because there may be several broadcast stations in an area but only one cable operator, monopoly cable operators will be in a position to play one station against another to keep retransmission consent fees low.[190]

82. *Antitrust exemption.* We pointed out in the *Notice* that the Sports Broadcasting Act of 1961, 15 U.S.C. Sections 1291-95, exempts from the antitrust laws joint agreements among professional sports teams in the NFL, NBA, NHL and MLB that permit the leagues to sell telecasting rights on behalf of individual member teams. We noted that MLB also benefits from a separate, more general antitrust exemption. We sought comment on the extent to which sports distribution contracts would be different absent the antitrust exemption, and suggested that any regulation in this area might be directed at sports teams and leagues rather than the media to which they sell telecasting rights.[191] The few commenters addressing this issue assert that the Sports Broadcasting Act ensures widespread availability of professional sporting events to the viewing public by permitting leagues to offer coordinated television packages without legal obstacles. They also contend that shared revenues generated through television contracts have allowed for league expansion, which has lead to a greater number of games telecast. They accordingly do not recommend revision of the Act.[192]

VI. RECOMMENDATIONS AND CONCLUSIONS

83. The majority of commenters submit that the record of this proceeding does not warrant any legislative recommendations or regulatory action with respect to migration of sports programming.[193] Further, MLB contends that circumstances have not materially changed since the District of Columbia Court of Appeals invalidated the Commission's prior anti-siphoning rules in *Home Box Office, Inc. v. FCC*, 567 F.2d 9 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829.[194] CapCities/ABC and NBC, however, suggest that the Commission might wish to consider narrowly tailored government intervention if popular and widely available sports events such as the Super Bowl, the World Series, the Olympic Games and other championship and playoff games appear in danger of migrating to a subscription service, particularly a pay-per-view service.[195]

84. Conversely, INTV recommends that the Commission adopt sports siphoning rules. It contends that the size and penetration of the cable industry and the extent of sports migration have changed substantially since the previous rules were struck down in *Home Box Office*.[196] The New York City Department of Telecommunications and Energy does not recommend the adoption of regulations at this time, but urges the Commission to establish a Sports Pro-

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[181] Time Warner Comments at 40-47.

[182] *See generally* INTV Comments, INTV Reply, CBS Reply.

[183] CBS Reply at 11.

[184] Viacom Comments at 6-7.

[185] *See, e.g.*, NFL Comments at 32-33; NBA Comments at 20.

[186] NAB Comments at 5.

[187] *See, e.g.*, CBS Comments at 13; NFA Comments at 28-29; MLB Comments at 9 n.4; NCTA Reply at 5-7; Rainbow Comments at 8-9.

[188] *See* 47 U.S.C. Section 325(b).

[189] *See* NCTA Reply at 5-7; Rainbow Comments at 8-9; Time Warner Comments at 40-46.

[190] INTV Reply at 5-6. While we cannot predict the effect that retransmission consent rights will have on the broadcasting of sports events, we note that some sports programming can be quite valuable and may enable a station to command considerable retransmission consent fees. Retransmission consent payments will be determined by the value of the programming and not by the network affiliation, or lack of affiliation, of the broadcast station.

[191] *Notice* at 1496 & n.28.

[192] *See* NBA Comments at 18-19; NFL Comments at 31-32; NHL Comments at 19; NHL Reply at 9; *see also* CapCities/ABC Comments at 6 (the antitrust exemption benefits broadcasters by enabling leagues to efficiently assemble packages of games that will be attractive to viewers and can be marketed effectively to advertisers).

[193] *See, e.g.*, Daniel Scott Dunham Comments at 4; NFL Comments at 2-4; MLB Comments at 11-13, 19; Rainbow Comments at 21-23; Time Warner Comments at 38-39; Tribune Comments at 8.

[194] MLB Reply at 11-13.

[195] *See* CapCities/ABC Comments at 5-6; NBC Comments at 3-6.

[196] INTV Comments at 28-32.

gramming Advisory Committee to analyze the causes and consequences of migration trends and to formulate recommendations. It suggests that the committee include government officials and representatives of the sports, broadcasting and cable industries.[197] NFL and NHL submit, however, that establishment of such a committee is unnecessary.[198]

85. As we stated at the outset of this *Interim Report*, we believe that it would be premature for us to make specific recommendations at this time. We will, however, offer our tentative findings based on the record currently before us. There is no question that the number of sports events shown on cable television has increased since 1980. It does not appear, however, that this increased cable exposure has led to a concomitant decrease in the number of sporting events shown on broadcast television; to the contrary, broadcast exposure has increased in some cases. The Commission has long been concerned that widely popular sports events remain available to the public via free, over-the-air television. Although the record does not at this time reveal a migratory trend towards cable, either overall or in individual sports, we note that we will explore these issues in greater detail in our *Final Report*. If we believe that the availability of sporting events to the public is in jeopardy, we will not hesitate to suggest corrective legislation or to take appropriate regulatory action.

86. Regarding the six sports that are the subject of our inquiry, the record shows that NFL and college basketball games have not migrated to cable television and are in little danger of doing so. With respect to college football, we do not believe that games previously available to broadcast television have moved to cable television, but we will make further inquiries regarding preclusive contracts between college football conferences and video programming vendors, including broadcasters. Similarly, it appears that migration of NBA, MLB and NHL games has not taken place at the national level, and, while some NBA, MLB and NHL games have moved to cable in some local markets, it appears that local migration has been isolated and relatively slight. The Commission will nonetheless closely monitor migration trends at the local level for basketball, baseball and hockey before issuing its *Final Report*. We observe that the market factors with respect to professional hockey programming may differ relative to professional football, basketball or baseball due to considerably fewer national viewing choices over the relevant time period. Thus, most viewing choices are limited to local programming for regular season and most playoff games and the local rating numbers are conceivably based on unique market dynamics. As a result, the general findings regarding migration for professional hockey could differ from our findings regarding other sports. We invite commenters to discuss these initial impressions upon release of our *Further Notice of Inquiry* in this proceeding.

VII. DATA COLLECTION FOR FINAL REPORT

87. Pursuant to Section 26 of the statute, the Commission must issue a *Final Report* on this subject on or before July 1, 1994. In anticipation of our *Final Report*, we intend to issue a *Further Notice of Inquiry* in late 1993 or early 1994 in order to permit commenters to update the information already submitted. In addition, while the record of this proceeding reflects a great deal of information regarding distribution of sports programming, a few areas warrant further comment. For example, trade reports indicate that the broadcasting arrangment MLB has negotiated with ABC and NBC for next season will change the way regular season games are telecast, and will revise the MLB playoff schedule.[199] NHL has likewise announced a reconfiguration of its league structure and playoff schedule, and NBA has negotiated a revised broadcasting arrangement with NBC. There is also some question as to ESPN's future involvement in the telecasting of professional baseball. We intend to seek further comment on these arrangements as they are finalized. Further, as discussed in Section IV, *supra*, we need more information regarding exclusive contracts, particularly college football contracts, in order to fully evaluate whether these arrangements are preclusive with respect to local broadcasters. Additional data regarding local telecasts of college football and basketball would also be useful, as noted in Section III-F, *supra*, as would information regarding the cost of subscribing to the various cable services mentioned in the record. While we do not request specific comment in response to this *Interim Report*, we raise these issues to prepare commenters to more fully address them, along with other issues, in connection with our forthcoming *Further Notice of Inquiry*.

VIII. ADMINISTRATIVE MATTERS

88. This *Interim Report* is issued pursuant to authority contained in Section 26 of the Cable Television and Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and Sections 4(i) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 403.

89. For further information concerning this proceeding, contact Jane Hinckley Halprin ((202) 632-7792) or Scott Roberts ((202) 632-6302), Policy and Rules Division, Mass Media Bureau.

IX. ORDERING CLAUSE

90. IT IS ORDERED that the Secretary shall send copies of this *Interim Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

197 NYC Comments at 2, 7.
198 NFL Comments at 5-6; NHL Reply at 9.
199 *See* note 83, *supra*.

APPENDIX A
Section 26 of 1992 Cable Act

SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.

(a) Study Required.--The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) Report on Study.--The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) Analysis of Preclusive Contracts Required.--

(1) Analysis required.--In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) Definition.--For purposes of this subsection, the term "preclusive contract" includes any contract that prohibits--

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

APPENDIX B

List of Commenters

Initial Comments

1. Affiliated Regional Communications, Ltd.
2. Association of Independent Television Stations, Inc.
3. Atlantic Coast Conference
4. Big East Conference/Big East Football Conference
5. Capital Cities/ABC, Inc.
6. Nicholas P. Cessario
7. College Football Association
8. Colonial Athletic Association
9. Colorado Athletic Conference
10. Colorado State University
11. John M. Corothers
12. Daniel Scott Dunham
13. ESPN, Inc.
14. Madison Square Garden Corp.
15. National Association of Broadcasters
16. National Basketball Association
17. National Broadcasting Co., Inc.
18. National Cable Television Association, Inc.
19. National Collegiate Athletic Association
20. National Football League
21. National Hockey League
22. New York City Department of Telecommunications and Energy
23. Office of the Commissioner of Baseball
24. Pacific 10 Conference
25. Rainbow Programming Holdings, Inc.
26. Southland Conference
27. Southwest Conference
28. Texas Special Olympics
29. Time Warner Entertainment Co., L.P.
30. Tribune Broadcasting Co.
31. Turner Broadcasting System, Inc.
32. United Video, Inc.
33. University of Denver
34. University Interscholastic League
35. Viacom International, Inc.
36. Wireless Cable Association International, Inc.
37. Andrew Zimbalist

Reply Comments

1. Affiliated Regional Communications, Inc.
2. Association of Independent Television Stations

3. Brigham Young University
4. Capital Cities/ABC, Inc.
5. CBS, Inc.
6. College Football Association
7. East Carolina University
8. Madison Square Garden Corporation
9. National Cable Television Association, Inc.
10. National Football League
11. National Hockey League
12. Office of the Commissioner of Baseball
13. Pappas Telecasting Companies
14. Time Warner Entertainment Company, L.P.
15. Tribune Broadcasting Company
16. University of Alabama
17. University of Arkansas
18. University of Pittsburgh

Additional or Supplemental Comments

1. Capital Cities/ABC
2. College Football Association (2 filings)
3. Dennis L. Donna
4. Mr. and Mrs. Dean Gamble
5. Ron Kessler
6. Donald J. Mueller
7. National Basketball Association (2 filings)
8. National Hockey League
9. Office of the Commissioner of Baseball (2 filings)
10. Tribune Broadcasting Company

APPENDIX C

Charts

Chart 1: Subscribership of National Cable Networks and Superstations

Network/ Superstation	Number of Subscribers 1992	Number of Subscribers 1985
ESPN	60 million	37 million
USA	60 million	31 million
TBS	59 million	35 million
TNT	56 million	(began 10/88)
WGN	38 million	17 million
BET	34 million	12 million
SportsChannel America	18 million	(began 1/89)
WWOR	13.5 million	5.6 million
WPIX	9.5 million	2.0 million
KTLA	5.2 million	(began 3/88)
KTVT	2.3 million	1.6 million
WSBK	0.6 million	(began 2/88)

Sources: 1992 data: National Cable Television Association, *Cable Television Developments*, October 1992, pp. 1-C to 33-C. 1985 data: *Broadcasting Cable Yearbook 1987*, p. E-10.

Chart 2: Number of NFL Games Telecast and Their Ratings for All Regular Season Games on CBS, ABC, NBC, ESPN and TNT Networks

Season	Games on CBS 1/ Telecast	CBS Rating	Games on ABC 2/ Telecast	ABC Rating	Games on NBC 3/ Telecast	NBC Rating	Games on ESPN 4/ Telecast	ESPN Rating	Games on TNT 5/ Telecast	TNT Rating
1980	27	15.3	20	20.3	30	14.7	-	-	-	
1981	27	17.5	20	21.2	32	13.8	-	-		-
1982	17 6/	16.5	12	19.3	16	13.9	-	-	-	-
1983	27	16.7	12	17.4	27	12.5	-	-	-	-
1984	27	14.3	21	16.1	27	12.1	-	-	-	-
1985	27	15.8	21	18.5	27	12.7	-	-	-	-
1986	27	15.2	21	17.6	27	12.4	-	-	-	-
1987	26	13.9	12	18.6	25	11.2	8	10.6	-	-
1988	27	13.8	16	16.9	27	11.7	8	9.3	-	-
1989	27	13.8	16	18.1	27	11.1	8	10.2	-	-
1990	30	13.5	17	16.7	29	11.0	8	9.8	8	7.0
1991	28	13.1	17	16.8	29	10.7	9	8.4	9	6.4
1992	30	13.0	17	16.5	29	11.2	9	8.4	9	6.9

1/ CBS reply comments, Appendix A.

2/ Cap Cities/ABC comments, Exhibit A.

3/ NBC comments, Exhibit A.

4/ ESPN comments p. 3.

5/ NFL comments, Exhibit D.

6/ Players' strike shortens season.

Chart 3: Number of NFL Playoff Games Telecast and Their Average Ratings On CBS, ABC, and NBC

Season	Games on CBS 1/ Telecast	Rating	Games on ABC 2/ Telecast	Rating	Games on NBC 3/ Telecast	Rating
1980	4	30.5	-	-	4	27.4
1981	4	32.1	-	-	4	28.8
1982	5	26.0	-	-	(no data)	
1983	4	26.1	-	-	4	21.0
1984	4	25.2	-	-	4	21.8
1985	4	27.1	-	-	4	23.8
1986	4	24.1	-	-	4	22.8
1987	4	24.9	-	-	4	23.9
1988	4	23.7	-	-	4	20.9
1989	4	21.4	-	-	4	22.1
1990	4	24.2	2	18.5	4	20.9
1991	4	25.1	2	19.2	4	23.0
1992	4	25.9	2	18.3	4	21.9

Includes wildcard, playoffs and Conference Championship games but not Super Bowls.

1/ CBS reply comments, Appendix A.

2/ Cap Cities/ABC comments, Exhibit A.

3/ NBC comments, Exhibit A.

Chart 4: Regular Season National NBA Telecasts (Broadcast and Cable)

Season	No. of National TV Broadcasts 1/	Rating	No. of Nat'l Cable Telecasts 2/	Rating
1980-1981	14	6.2	40	na
1981-1982	19	6.0	40	na
1982-1983	7	6.7	80	na
1983-1984	9	6.3	80	2.0
1984-1985	11	6.4	55	2.0 3/
1985-1986	12	7.1	55	2.2 3/
1986-1987	15	6.7	55	2.2
1987-1988	16	5.7	50	2.8
1988-1989	16	5.8	55	2.3
1989-1990	16	5.2	51	1.9
1990-1991	22	4.7	51	1.8
1991-1992	24	4.8	51	1.8
1992-1993	14 4/	5.6	39 5/	1.7

1/ Includes All-Star game.

2/ Does not include games that were authorized for local broadcast and were retransmitted for national distribution on superstations. Also, does not include telecasts of All-Star weekend special events.

3/ One game not included in average due to lost transmission.

4/ Through March 14, 1993. NBC is scheduled to broadcast a total of 25 regular season games.

5/ Through March 14, 1993. TNT is scheduled to telecast a total of 51 regular season games.

Note: CBS broadcast the games from 1980-81 to 1989-90; NBC therafter. On cable, the USA Network telecast the games from 1980-81 to 1981-82; ESPN/USA from 1982-83 to 1983-84; TBS from 1984-85 to 1988-89; TNT therafter.

NBA comments, Exhibits 3 and 4.

Chart 5: Post-Season National NBA Telecasts (Broadcast and Cable)

Season	No. of National TV Broadcasts	Rating	No. of Nat'l Cable Telecasts*	Rating
1980-1981	26	6.6	10	na
1981-1982	21	8.2	10	na
1982-1983	19	7.9	20	na
1983-1984	23	7.4	24	2.8
1984-1985	21	7.8	21	2.9
1985-1986	21	8.7	20	3.8
1986-1987	22	9.5	24	3.7
1987-1988	26	9.4	31	4.4
1988-1989	20	8.7	26	4.2
1989-1990	26	8.3	30	3.6
1990-1991	24	8.6	34	3.3
1991-1992	28	8.7	37	3.0
1992-1993	na	na	na	na

* Does not include games that were authorized for local broadcast and were retransmitted for national distribution on superstations.

Note: CBS broadcast the games from 1980-81 to 1989-90; NBC therafter. On cable, the USA Network telecast the games from 1980-81 to 1981-82; ESPN/USA from 1982-83 to 1983-84; TBS from 1984-85 to 1988-89; TNT therafter.

NBA comments, Exhibits 3 and 4.

Chart 6: Local/Regional NBA Telecasts (Broadcast and Cable)

	<-------Regular Season------>		<-------Post-Season------->	
Season	Local/Reg'l Broadcast*	Local/Reg'l Cable	Local/Reg'l Broadcast	Local/Reg'l Cable
1981-1982	494	329	na	na
1982-1983	465	570	21	14
1983-1984**	486	502	60	31
1984-1985	461	629	46	24
1985-1986	523	543	44	28
1986-1987	563	520	59	22
1987-1988	582	577	46	38
1988-1989	710	634	44	29
1989-1990	716	779	45	39
1990-1991	709	914	52	27
1991-1992	700	910	47	42
1992-1993	736	922	--	--

* For this chart, superstation games have only been accounted for as broadcasts in the local market of the team carried by that superstation.

** First year of expanded playoff format.

NBA comments, Exhibits 1 and 2.

Chart 7: National Major League Baseball Television Broadcasts (1980-1992)

Season	No. of Regular Season Games	Average Rating Per Regular Game	No. of Post-Season Games	Average Rating/ Post-Season Game
1980	52	8.0	14	25.5
1981	38	6.7	14	21.4
1982	63	8.7	16	22.2
1983	63	7.9	13	17.8
1984	52	7.3	13	18.6
1985	51	7.4	20	19.0
1986	68	6.0	20	20.2
1987	48	7.2	19	18.1
1988	48	6.4	16	17.2
1989	46	5.6	14	14.3
1990	16	4.7	14	14.2
1991	16	4.0	19	16.3
1992	16	3.4	19	13.6

NOTE: From 1980 to 1990, ABC and NBC broadcast national games; CBS thereafter.

ABC comments, Exhibit A; NBC comments, Exhibit C and CBS reply comments, Appendix A.

Chart 8: Locally Televised Regular Season Baseball Games (1982 - 1992)

Year	Broadcast	Cable	Total Games Televised
1982	1,554	400 est.	1,954
1983	1,558	659	2,217
1984	1,485	1,138	2,623
1985	1,536	820	2,356
1986	1,578	895	2,473
1987	1,597	971	2,568
1988	1,647	1,014	2,661
1989	1,653	1,061	2,714
1990	1,639	1,210	2,849
1991	1,669	1,248	2,917
1992	1,654	1,268	2,922

Commissioner of Baseball addendum filed March 30, 1993

Chart 9: NHL National Cable Telecasts

Season	Network	Reg. Season	Playoffs	All-Star Game
1980-81	na	na	na	na
1981-82	na	na	na	na
1982-83	na	na	na	na
1983-84	USA	33	22	1
1984-85	USA	33	25	1
1985-86	ESPN	33	34	1
1986-87	ESPN	34	37	0
1987-88	ESPN	34	35	0
1988-89	SPTS. CH.	150*	na	0
1989-90	SPTS. CH.	150	na	0**
1990-91	SPTS. CH.	150	na	0
1991-92	SPTS. CH.	150	na	0
1992-93	ESPN	25-27	Undetermined	0

* From the 1988-89 season through the 1991-92 season, SportsChannel America (SPTS. CH.) made available on satellite approximately 150 games. During this time all cable systems within a team's market were instructed to transmit up to 50 of these games during the regular season. Cable systems in non-NHL markets were instructed to transmit as many 75 of these games during the regular season. SportsChannel America was also granted the rights to telecast every Stanley Cup playoff game during these seasons.

** Beginning in 1990, the All-Star game was carried on NBC.

NHL comments, Attachment 1.

Chart 10: NHL Regular Season Over-the-Air Broadcasts

Season	Home	Away	Total
1981-82	48	276	324
1992-93	39	240	279

NHL reply comments, Appendix A.

Chart 11: National/Regional College Football Games and Ratings on Broadcast TV

Season	No. of Regular Season Games	Average Rating Per Regular Season Games	No. of Post-Season Games	Average Rating/ Post-Season Games
1980-1981	54	11.5	6	20.9
1981-1982	64	12.0	6	15.2
1982-1983	50	10.8	5	16.6
1983-1984	50	9.8	6	13.5
1984-1985	34	7.4	6	13.1
1985-1986	37	7.0	6	15.6
1986-1987	38	6.9	7	12.7
1987-1988	37	5.1	8	10.0
1988-1989	40	6.2	9	8.6
1989-1990	41	5.9	10	8.3
1990-1991	42	5.5	9	7.8
1991-1992	61	6.5	9	7.7
1992-1993	67	6.2	9	8.7

Data for 1980-82 regular season is ABC data only. Regular season data for 1982-91 is ABC data and CBS data combined. Regular season data for 1991-93 is ABC data and NBC data combined. All post-season data is ABC data and NBC data combined.

Cap Cities/ABC notes that the "number of games" figures reflect all games broadcast. Because ABC often provides regional coverage of these games, there typically are several games broadcast in the same "window" or time period. Similarly, the ratings reflect the average ratings for all games in all time periods in which the games appear.

Cap Cities/ABC Comments, Exhibit A; CBS reply comments, Appendix A: NBC comments, Exhibit D.

Chart 12: National Broadcast and Cable Network Coverage of College Football Games (1987-1992)

Year	No. of Games Broadcast (Nat'l)	No. of Games on Cable
1987	27	54
1988	30	61
1989	29	98
1990	42	196
1991	61	194
1992	67	192
Percent increase from 1987 to 1992:	148%	256%

Broadcast: ABC, CBS, NBC

Cable: ESPN, SportsChannel America, BET, TBS, FNN-Score (no longer operational), Prime Network, USA Network.

NCTA comments, Chart 4 citing Paul Kagan Associates, Inc., *Media Sports Business*, August 26, 1987, p. 2 and January 21, 1993, p. 8.

Chart 13: National Regular Season College Basketball Games Broadcast (1980-1993)

Season	No. of Broadcasts	Rating
1980-81	24	6.5
1981-82	40	6.2
1982-83	45	6.8
1983-84	50	4.7
1984-85	49	4.4
1985-86	44	4.6
1986-87	56	3.7
1987-88	56	3.9
1988-89	62	3.6
1989-90	70	3.1
1990-91	58	2.9
1991-92	58	2.8
1992-93	32	2.4

1980-81 data is NBC only; 1981-82 to 1985-86 data is NBC and CBS only; 1986-87 to 1991-92 is NBC, CBS and ABC data combined; 1992-93 game total is for ABC and NBC only and the rating average is NBC only.

CBS reply comments, Appendix A; Cap Cities/ABC comments, Exhibit A; and NBC comments, Exhibit E.

Chart 14: Average Ratings of Tournaments and Championship Basketball Games on CBS

Year	Tournaments	Championship Games
1982	9.9	21.6
1983	10.3	22.3
1984	9.2	19.7
1985	9.8	23.3
1986	9.2	20.7
1987	9.2	19.6
1988	9.4	18.8
1989	10.0	21.3
1990	9.5	20.0
1991	8.3	19.4
1992	9.0	22.7

CBS reply comments, Appendix A.

NOTE: NBC carried 11 tournament games in 1981 with an average rating of 10.9. NBC comments, Exhibit E.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-157

In the Matter of

Rules For the Filing of International Circuit Status Reports.

NOTICE OF PROPOSED RULE MAKING

Adopted: June 2, 1993; Released: July 2, 1993

Comment Date: September 1, 1993
Reply Date: October 1, 1993

By the Commission:

I. INTRODUCTION

1. By this *Notice of Proposed Rule Making* (NPRM) we seek comment on our proposals to: (1) codify in the Commission's Rules, requirements for the filing of international circuit status reports;[1] (2) reduce the frequency of filing such reports from monthly to annually; (3) require all facilities-based[2] international carriers to file such reports; (4) provide for a filing manual with reporting instructions; (5) specify a format for the filing of those reports; and (6) require the filing of such reports on computer diskettes.

II. BACKGROUND

2. Monthly circuit status reports have been filed by certain United States international facilities-based common carriers since the early 1970's. When the reports were first filed, all of the then existing United States international carriers filed reports. However, over the years, new entities which became facilities-based United States international common carriers were not requested to file monthly circuit status reports. As a result, at present, only some of the facilities-based United States international carriers file such reports.[3] Because no format for the reports was specified in the early 1970's, the carriers file the reports using a variety of formats. The reports are filed on paper only.

III. DISCUSSION

3. Our regulation of international common carrier facilities and services has changed radically since the early 1970's when the monthly circuit status reports were first filed. For example, no longer does the Commission specify cable-satellite circuit fill formulas for the international carriers as it did in the early 1970's.[4] We also have streamlined regulation of non-dominant international common carriers.[5] Thus, while we continue to find the information provided by the monthly circuit reports useful in discharging our Section 214 obligations, we find that we no longer require that this information be filed monthly. The circuit status reports continue to be used to determine use of existing international submarine cable and satellite facilities as a part of the assessment of the need for new cable and satellite facilities when considering applications for such facilities. In addition, the circuit status reports are used to determine whether a carrier is providing direct or indirect service to countries. The circuit status reports also continue to be used to assess industry trends in the use of international transmission facilities. We find that these uses for the information provided by the monthly circuit reports can be satisfied by submission of those reports once a year. Therefore, we propose to require that circuit status reports be filed only annually. We further propose that the circuit reports be filed on or before March 31 of each year and provide the circuit status information specified hereinafter as of December 31 of the immediately preceding year. We request comments on this and alternative proposals.

4. We believe that the information provided by the circuit status reports will be more useful if those reports provide industry-wide data on international facilities use. Having industry-wide data will allow us to better assess the need for additional facilities, the growth of international facilities and industry trends in the use of those facilities. Therefore, we also propose to require all facilities-based international common carriers to file annual circuit status reports. We request comments on this and alternative proposals.

5. We also find that our use of the information provided by the reports can be made more efficient if we now specify a format for the reports and require that they be filed on computer diskettes. These changes will allow us easily to combine data from the various carriers reports and to derive regional facilities use from the reports. The variety of formats used for the current reports and the lack of a machine readable format makes such activities very tedious at the present time.

6. We propose to direct the Chief, Common Carrier Bureau to prepare and issue a filing manual containing the reporting requirements and other instructions to be used

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[1] Generally, monthly circuit status reports indicate, on a country-by-country basis: (1) the number of circuits in each transmission facility an international carrier has activated for international message telephone, private line and telegraph grade services; (2) the number of idle circuits; (3) and the total number of circuits authorized or activated. Some carriers' reports provide additional information.

[2] For the purposes of this proceeding, we shall define facilities-based common carriers as those international common carriers which acquire international transmission facilities on an ownership or indefeasible right of use basis or lease satellite capacity from Comsat or a separate satellite system.

[3] At present, American Telephone and Telegraph Company (AT&T), Communications Satellite Corporation (Comsat), GTE Hawaiian Telephone Company, Inc. (HTC), MCI International, Inc. (MCII), TRT/FTC Communications, Inc. (TRT/FTC), U.S. Sprint Company, L.P. (Sprint) and Worldcom Inc. (Worldcom) file monthly circuit status reports.

[4] The last of the cable-satellite fill formulas was abolished in 1987. *See Distribution of U.S. Carrier Circuits*, 3 FCC Rcd 2156 (1988).

[5] *See International Carrier Policies*, 102 FCC 2d 812 (1985), *recon. denied* 60 R.R. 2d 1435 (1986).

by facilities-based international common carriers to prepare their reports. The manual will describe in detail the reporting requirements, the format to be used and clarify definitions to ensure that the information provided by the carriers is comparable. While we shall leave the specifics of the information to be filed to be specified by the Chief, Common Carrier Bureau in the filing manual, we anticipate that the circuit status reports will continue to provide, at a minimum, information, on a country-by-country basis, indicating the number of circuits in each transmission facility an international facilities-based carrier has activated for each of the specified services, the total number of circuits activated and the number of idle circuits. We request comments on these proposals.

IV. CONCLUSION

7. In this *Notice of Proposed Rule Making* we tentatively conclude that the public interest will be served by codifying the requirement for the filing of circuit status reports, reducing the frequency of filing those reports, requiring all facilities-based international common carriers to file such reports and by specifying in a filing manual to be developed by the Chief, Common Carrier Bureau a common format for the filing of those reports. We request comments on the proposals set forth in Appendix B and encourage participation by the international common carriers and other interested parties.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Sections 4, 214, 219, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§154, 214, 219, 303(r) and 403, that NOTICE IS HEREBY GIVEN of the proposed regulatory action described above and in Appendix B and that COMMENT IS SOUGHT on these proposals.

9. The Secretary shall serve a copy of this Notice of Proposed Rule Making on the Small Business Administration.

10. For further information on this item contact Robert E. Gosse, Attorney, Common Carrier Bureau, (202) 632-7834.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Procedural Matters

Ex Parte Rules - Non-Restricted Proceeding

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act

This rule making proceeding is initiated to obtain comment regarding the Commission's proposal to reduce the requirement for filing circuit status reports from monthly to annually, to specify a format for the filing of such reports and to require all facilities-based international carriers to file such reports.

Objectives

The Commission seeks to evaluate the filing of circuit status reports by facilities-based international common carriers in light of the reductions and streamlining of regulatory requirements which have occurred since such reports were instituted.

Legal Basis

The proposed action is authorized under section 4, 214, 219 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§154, 214 219, 303(r) and 403.

Reporting, Recordkeeping and Other Compliance Requirements

The actions proposed in this *Notice of Proposed Rule Making* will affect both large and small international facilities-based common carriers. The burden will be significantly reduced for carriers presently filing circuit status reports because of the reduction of the frequency of those reports from monthly to annually. However, some entities not now filing circuits status reports would be required to file such reports by the proposed action. Approximately 50 additional facilities-based international common carriers would be required to file annual circuit status reports. It is not estimated that the filing of annual circuit status reports will be a significant economic burden on facilities-based international common carriers.

Federal Rules That Overlap, Duplicate of Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved.

The proposals discussed in this *Notice of Proposed Rule Making* primarily will reduce regulatory requirements on facilities-based international common carriers by reducing the frequency of filing circuit status reports from twelve per year to one per year. Some facilities-based international carriers not now filing circuit status reports will be required to file such reports. Copies of this Notice will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Any Significant Alternatives Minimizing the Impact of Small Entities Consistent with the Stated Objectives

The *Notice of Proposed Rule Making* solicits comments on a variety of alternatives to achieve Commission objectives.

Paperwork Reduction

The proposals suggested impose reporting requirements on additional entities. We recognize the implementation of any such requirements will be subject to review of the Office of Management and Budget (OMB). Copies of this *Notice* will be sent to OMB.

Comment Dates

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§1.415 and 1.419, interested parties may file comments on or before September 1, 1993, and may file reply comments on or before October 1, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments and supporting comments. If you want each Commission to receive a personal copy of comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554

APPENDIX B

Proposed Rule

Part 43 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 43 continues to read as follows:

AUTHORITY: Secs. 4, 48 Stat/ 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs, 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

New Section 43.82 is added to read as follows:

§ 43.82 International Circuit Status Reports.

(a) Each facilities-based common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file a circuit status report not later than March 31 each year showing the status of its circuit used to provide international services as of December 31 of the previous year.

(b) The circuit status reports filed shall include information, on a country-by-country basis, indicating the number of circuits in each transmission facility used to serve a country a facilities-based international carrier has activated for each of the specified services, the total number of circuits activated and the number of idle circuits.

(c) The information required under this section shall be furnished in conformance with instructions and reporting requirements prepared by the Chief, Common Carrier Bureau.

(d) Authority is hereby delegated to the Chief, Common Carrier Bureau to prepare instructions and reporting requirements for the filing of the annual international circuit status reports.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Edens Broadcasting, Inc. — File Nos. BR - 900601C9, BRH - 900601F3

For Renewal of Licenses for
Stations KOY/KOY-FM[1]
Phoenix, Arizona

MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY

Adopted: June 18, 1993; Released: July 2, 1993

By the Commission: Chairman Quello concurring; Commissioner Barrett, concurring in part, dissenting in part and issuing a statement.

1. The Commission has before it for consideration: (i) license renewal applications filed for the two captioned radio stations in Arizona; (ii) a Petition to Deny timely filed on September 4, 1990, by the Idaho/Nevada/Utah State Conference of Branches of the NAACP, the Arizona State Conference of Branches of the NAACP and various local NAACP branches (collectively "NAACP") against the renewal applications of the captioned broadcast stations;[2] (iii) the licensee's responses to a staff letter of inquiry; and (iv) a Joint Request for Approval of the Settlement Agreement filed by the NAACP and the licensee, Edens Broadcasting, Inc.

2. *SETTLEMENT AGREEMENT.* On April 4, 1991, the NAACP filed a motion to withdraw the challenge against the renewals for stations KOY/KOY-FM and, together with the licensee, Edens Broadcasting, Inc., filed a settlement agreement. By letter of November 5, 1991, the Commission approved the settlement agreement and accepted NAACP's motion to withdraw its petition.[3] However, notwithstanding the agreement, we have reviewed the stations' Equal Employment Opportunity (EEO) Program and performance pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 309. We find the licensee did not engage in affirmative recruitment efforts for a substantial number of its vacancies and failed to maintain adequate records for much of its tenure. Thus, we will grant renewal subject to appropriate remedies and sanctions.

3. *DISCUSSION.* Section 73.2080 of the Commission's Rules, 47 C.F.R. 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified minorities and women are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. *See* Sections 73.2080(b) and 73.2080(c).

4. When the renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of sanctions or remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. *Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services,* 2 FCC Rcd 3967 (1987) (*Broadcast EEO), petition for recon. pending; see also* 4 FCC Rcd 1715 (1989)(request for clarification by the National Association of Broadcasters). *See e.g., Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC,* 854 F.2d 501, 506 (D.C. Cir. 1988); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC,* 595 F.2d 621 (D.C. Cir. 1978).

5. Review of the licensee's renewal applications and inquiry response indicates that KOY/KOY-FM filled 72 full-time job vacancies, including 51 for upper-level positions during the period May 31, 1987, to May 31, 1990. In its inquiry response, the licensee reported receiving minority referrals from *Arizona Republic/Phoenix Gazette* (two), Salt River Agency (two), and walk-in applicants (five). The stations indicate that their policy since October 1989 has been to mail recruitment letters to 42 general and minority specific sources whenever a job vacancy occurs. However, in preparing its response to the Commission's inquiry, the licensee ascertained that the procedure has not been uniformly followed. It explained that "... documentation of its hiring activities during the past few years is incomplete, perhaps because of the high degree of employee turnover at the management level." KOY/KOY-FM contacted employees who were either involved in or responsible for the stations' hiring activities during the three-year period under review to reconstruct recruitment and employment data. In sworn statements, those employees (who were department heads responsible for hiring) detailed their recruitment efforts, and in instances where written declarations could not be obtained, the licensee summarized conversations between station staff and the persons involved in

[1] On December 4, 1984, the Commission granted the assignment of KOY/KOY-FM from Harte-Hank Radio, Inc. to Edens Broadcasting, Inc. (File Nos. BAL - 841005FL, BALH - 841005FM). The call sign for the FM station was changed from KQYT to KOY-FM, effective July 1, 1986. Also, currently pending before the Commission are the assignment applications for the voluntary transfer of the stations from Edens Broadcasting, Inc. to Sundance Broadcasting, Inc. (File Nos. BAL - 921224EA, BALH - 921224EB).

[2] The Petition to Deny also included challenges against other radio stations in Arizona and Nevada. Those stations will be addressed in a separate order.

[3] Due to the settlement agreement reached by the parties, the issue of standing is moot.

the recruitment.[4] For 19 positions, it appears the licensee contacted the following sources, but not all sources for each vacancy: five colleges, one university, local private electronic trade schools, the Society of Broadcast Engineers, *Radio & Records*, broadcast trade publications, Bailey School of Broadcasting, United Broadcast School, radio stations, record company promotion staff and letters mailed to local "ethnic and minority groups."[5] A local sales manager, two account executives and one bookkeeper were recruited with eight minority groups, two womens' organizations, two agencies and one minority newspaper. It does not appear that the licensee recruited for the remaining 49 vacancies.[6] The licensee's records do not reflect either the number of applicants, interviewees, their race or national origin. From our review of the records, we find that the licensee attracted, interviewed and hired seven minorities (five Hispanics, two Blacks) for four lower-level and three upper-level positions (two Hispanics, one Black).[7]

6. The licensee states that the variation in recruitment methods among department heads is partially due to the difference in the types of jobs being filled, but that notwithstanding, a large number of recruitment sources, including minority specific sources, were used. It acknowledges that its records don't reflect the "number of applications received for each position filled, or the numbers and categories of minorities applying for each position filled." Finally, KOY/KOY-FM asserts that although there has been some fluctuation in its employment profile, minority employment at the stations has generally increased since it acquired the stations.

7. Our review of the record reveals no substantial or material question of fact warranting a hearing. Nor do we find any indication of employment discrimination because the licensee attracted and employed minorities. We concur, however, with the licensee's statement that its recruitment policy was not uniformly followed. The stations failed to implement and enforce an overall program for all departments to ensure consistency of their recruitment efforts. As a result, the majority of KOY/KOY-FM's 72 full-time positions -- 49 -- were not recruited. Therefore, 68% of the licenseee's hiring opportunities were not filled pursuant to any EEO program, and thus, indicate deficient recruitment efforts. We also find KOY/KOY-FM's record-keeping inadequate. In this regard, the licensee stated that most of its employment records for the period under review were either "lost or destroyed." We are troubled by the licensee's failure to maintain records needed to substantiate its license term performance and facilitate review of its renewal applications.

8. Upon review of the record, we find that grant of KOY/KOY-FM's renewal application for a short term renewal and issuance of a Notice of Apparent Liability for $25,000 is justified.[8]

9. Accordingly, IT IS ORDERED that the Petition to Deny filed by the Idaho/Nevada/Utah State Conference of Branches of the NAACP and the Arizona State Conference of Branches of the NAACP and its affiliate branches IS DISMISSED.

10. IT IS FURTHER ORDERED that the Joint Request for Approval of the Settlement Agreement IS GRANTED and the settlement agreement submitted by NAACP and Edens Broadcasting, Inc. is approved.

11. IT IS FURTHER ORDERED that the license renewal applications for Stations KOY/KOY-FM ARE GRANTED FOR A SHORT TERM ending October 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of $25,000.

12. IT IS FURTHER ORDERED that the licensee of Stations KOY/KOY-FM submit to the Commission an original and one copy of the following information on June 1, 1994, June 1, 1995, and June 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin, sex and the referral source or each applicant for each job and the

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[4] The stations indicate that a KOY/KOY-FM staff person conducted telephone interviews with former department heads in sales, news and programming. The particulars of those conversations were included with the licensee's inquiry response for the purpose of verifying recruitment for various types of jobs. However, because the statements of these individuals are not supported by sworn declarations, they are less authoritative for the purpose of substantiating employment matters at the stations.

[5] The subject hires included one engineer, one music director, three producers, seven announcers and seven promotion vacancies.

[6] For some of the 49 positions where we conclude that the licensee did not recruit, the inquiry response indicates that the positions were filled by walk-in candidates, staff referrals, or by a sole candidate. For the remaining jobs, the licensee does not specify recruitment efforts.

[7] KOY/KOY-FM is located in the Phoenix, Arizona MSA with a labor force including 42.1% female, 2.7% Black, 11.3% Hispanic, 1.0 Asian-Pacific Islander, 1.1% American Indian. In its 1985 Annual Employment Report, the licensee indicated a full-time staff of 65 employees, including seven minorities: four Hispanics (6%), two Blacks (3%) and one American Indian (2%). The upper-level staff of 54 employees included four minorities: two Hispanics (4%), one Black (2%) and one American Indian (2%). The following year, 1986, the licensee had a full-time staff of 72 employees, of which four were minorities: three Hispanics (4%) and one Black (1%). The licensee reported an upper-level staff of 60 employees, with three Hispanics (5%). The licensee's full-time staff decreased in 1987 to 44 employees, including four minorities: two Blacks (5%) and two Hispanics (5%). The upper-level staff of 38 employees included two Hispanics (5%). The 1988 Annual Employment Report reported 51 full-time employees, including two minorities: one Black (2%) and one Hispanic (2%). One Hispanic (2%) was reported on the upper-level staff of 44 employees. In 1989, the full-time staff decreased to 44 employees, including four minorities: two Blacks (5%) and two Hispanics (5%). Three minorities -- two Hispanics (5%) and one Black (3%) -- were present on the upper-level staff of 38 employees. In 1990, the licensee reported 40 employees on its full-time staff, including four minorities: three Hispanics (8%) and one Black (3%). The upper-level staff of 34 employees included three Hispanics (9%).

[8] In view of the pending assignment applications for KOY/KOY-FM, we note that upon grant of those applications, the reporting conditions will follow the licenses and pass automatically to the assignee. *See Woolfson Broadcasting, Inc.*, 4 FCC Rcd 6160 (1989).

race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted;[9]

(b) A list of all employees as of the May 1, 1994, payroll period for the first report and as of the May 1, 1995, and May 1, 1996, payroll periods for the second and third reports by job title and FCC job category, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex and race or national origin; and

(c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

13. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

14. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

15. Should you have any questions regarding this action or require further information concerning employment reports, you may call the Mass Media Bureau's EEO Branch at (202) 632-7069. With respect to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. Section 1.80, as summarized in the attachment to this *Order*. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[9] Such a list might start:

1) News Director: Officials and Managers; Full-time.

3 Applicants:	1 White female	A.W.R.T.
	1 Hispanic male	National Hispanic Media Coalition
	1 Black female	NAACP

Sources contacted - Local newspaper, A.W.R.T., National Hispanic Media Coalition and NAACP

Selected - Hispanic male (08/19/91)

Statement
of
Commissioner Andrew C. Barrett
Concurring in Part/Dissenting in Part

In re: KOY/KOY-FM, Phoenix, Arizona, License Renewal

This Memorandum Opinion and Order and Notice of Apparent Liability [NAL] imposes sanctions against Edens Broadcasting, Inc., licensee of KOY/KOY-FM for serious violations of our Equal Employment Opportunity [EEO] rules from 1984-1990. During this six-year period, the licensee demonstrated inadequate recruitment efforts for 49 of 72 positions. Thus, 68% of the licensees hiring opportunities were not filled pursuant to any EEO program. The licensee failed to maintain the necessary recruiting records to substantiate its license term performance or facilitate review of its 1990 renewal application. In sum, the licensee failed to implement, assess, and enforce a consistent EEO program in its recruiting efforts.

I concur in this Order to the extent that it imposes short-term renewal and reporting condition sanctions on the licensee. I continue to be concerned that when station licensees apply for renewal, their incentive to take EEO violations seriously is not reduced by a lack of Commission commitment to impose the necessary sanctions. The Commission has not imposed EEO fines based on day-to-day violations, as we do in areas such as tower violations or indecency.[1] Without utilizing short-term renewal sanctions in combination with serious fine levels, I believe stations could calculate the minimal cost of EEO violations relative to other per-day violations, and integrate that calculation into the sales price of a station at time of assignment. Since EEO fines will not approach the $250,000 maximum sanction authorized for broadcasters in other areas, EEO fines alone will continue to be a mere decimal point in the overall value of any station transaction.[2] Clearly, imposing fines alone would be a signal that the FCC takes EEO violations less seriously than violations of other Commission rules. Thus, the short-term renewal sanction is a crucial EEO enforcement and accountability lever. In this case, the licensee's EEO records are so inadequate that it effectively constitutes an absence of any EEO program. Short-term renewal is warranted.

I dissent in this Order because I believe the lack of an EEO program is exacerbated by Eden Broadcasting's failure to obtain a larger population of minority applicants in its hiring pool. The Phoenix, Arizona MSA includes a labor force consisting of 42.1% female, 11.3% Hispanic, 2.7% black, 1.0% Asian-Pacific Islander, and 1.1% Ameri-

[1] See, Separate Statement of Commissioner Andrew C. Barrett, RE: Applications of Cook Inlet Radio License Partnership, L.P. and Infinity Broadcasting [NAL imposing $600,000 sanction against Infinity Broadcasting for indecency violations], December 18, 1992.

[2] In the context of a station assignment, transactions that constitute several million dollars [or even several hundred thousand dollars] are not likely to be effected by an EEO sanction of $20-30,000. Yet, the net effect of EEO violations can have more serious impacts on people's lives than other FCC violations.

can Indian. From 1984-1990, the licensee had 51 hiring opportunities for upper level staff positions. During that period, 3 minorities were hired. There is no way to assess the number of minorities in the licensee's applicant pool for these 51 positions, due to the lack of adequate records. Given the presence of a significant minority population in the labor force, the lack of hiring sensitivity to both our EEO requirements and the local labor force minority population is inexcusable. Our EEO requirements have been in place for a period of time. If these requirements are going to be taken seriously, I believe the Commission must be more assertive in imposing NAL sanctions commensurate with the new forfeiture levels allowed for broadcasters. Given the de facto manner in which minorities were excluded from the hiring pool for a vast majority of the positions, including 51 upper level positions, a higher forfeiture sanction is warranted in this case. Thus, I dissent.[3]

I question how our minority ownership policies can continue to have some impact, where minorities constantly are penalized for a lack of broadcast or cable management level experience.[4] If the FCC does not continue efforts to aggressively enforce its EEO rules, minority employment and minority ownership in the media industry will continue to suffer. If we are to make any progress toward increased harmony between the diverse segments of our population, I believe this agency has a unique responsibility to uphold the public interest mandates of our EEO rules.

[3] The Commission currently is discussing the appropriate level of EEO sanctions under our new forfeiture authority. I am hopeful that those discussions will address my concerns regarding our ongoing efforts with regard to EEO.

[4] See, Concurring Statement of Commissioner Andrew C. Barrett, Shreveport, LA Comparative FM proceeding, June 11, 1993.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

FRANKLIN COMMUNICATIONS PARTNERS, L.P.
Assignor

File Nos. BAL-921230EA
BALH-921230EB

and

WEST VIRGINIA RADIO CORPORATION OF CHARLESTON
Assignee

For Assignment of Licenses
of WCAW(AM)/WVAF-FM
Charleston, West Virginia

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 1993; Released: July 14, 1993

By the Commission:

1. The Commission has before it for consideration the above-captioned application for consent to assign the licenses of WCAW(AM)/WVAF-FM, Charleston, West Virginia, from Franklin Communications Partners, L.P. ("Franklin") to West Virginia Radio Corporation of Charleston ("WVRC"). A petition to deny this application was filed on February 10, 1993 by Bristol Broadcasting Company, Inc. ("Bristol"), the licensee of WQBE(AM)/WQBE-FM, Charleston, West Virginia. WVRC and Franklin filed a joint opposition to Bristol's petition on February 25, 1993, to which Bristol replied on March 8, 1993. Additionally, John W. Dickensheets ("Dickensheets") filed a letter opposing the assignment application on February 10, 1993. Franklin and WVRC responded to Dickensheets' letter on March 10, 1993, and Dickensheets replied.[1]

2. WVRC is presently the licensee of WCHS(AM)/WKWS-FM, an AM/FM combination in Charleston, West Virginia. WVRC proposes to acquire another AM/FM combination licensed to Charleston, West Virginia, WCAW(AM)/WVAF-FM. The relevant principal community contours of WCHS(AM) and WCAW(AM) overlap in the Charleston Arbitron metro market, as do the relevant principal community contours of WKWS(FM) and WVAF(FM). Therefore, pursuant to 47 C.F.R. § 73.3555(a), WVRC submitted an exhibit to demonstrate that its proposed co-ownership of these four Charleston radio stations was permissible. Specifically, WVRC submitted an exhibit to demonstrate that the principal community contours of 36 commercial radio stations overlap or intersect the relevant market encompassed by the principal community contours of the mutually overlapping stations which WVRC proposes to co-own. Because the market included fifteen or more commercial radio stations, WVRC submitted audience share data to demonstrate that the combined audience share of the proposed co-owned stations does not exceed 25 percent in the Charleston metro market. The audience share data submitted by WVRC were derived from the Spring 1992 Arbitron ratings.

3. Bristol, in its petition to deny, contends that the application must be denied because the Arbitron audience data for the Charleston metro market demonstrates that the combined audience share of the proposed co-owned stations exceeds 25 percent. Specifically, Bristol points out that the audience share data for the Charleston metro market collected during the Fall 1992 Arbitron survey, which was conducted from September 24, 1992 to December 16, 1992, prior to the time that the application was filed, indicates that the combined audience share of the stations at issue is 27.5 percent. However, the results of Arbitron's Fall 1992 survey were released no earlier than January 19, 1993.[2] Nevertheless, Bristol contends that WVRC's application must be evaluated based on the higher Fall 1992 Arbitron audience share data, not the Spring 1992 Arbitron data submitted with the application. Bristol argues that the plain meaning of 47 C.F.R. § 73.3555(a) requires consideration of audience share data which became available while the application is pending but not yet granted. Dickensheets also contends that the application should be evaluated on the basis of the Fall 1992 Arbitron survey.[3]

4. In the joint opposition, WVRC and Franklin assert that the Fall 1992 Arbitron ratings data were not available at the time that the assignment application was filed on December 30, 1992. Specifically, WVRC and Franklin argue that although the relevant survey period for the Fall 1992 ratings ended on December 16, 1992, their applica-

[1] Dickensheets requested the intervention of Senator Robert C. Byrd in the Commission's consideration of the subject assignment application. Dickensheets enclosed with this request his letter objecting to the sale of the licenses for WCAW(AM)/WVAF-FM. Thereafter, on February 10, 1993, Senator Byrd presented Dickensheets' letter to the Commission. Pursuant to the Commission's *ex parte* rules, Dickensheets' letter was served on the parties. *See* 47 C.F.R. § 1.1212(e). Dickensheets' allegations will be considered as an informal objection pursuant to 47 C.F.R. § 73.3587. However, we note that Dickensheets' communication to Senator Byrd, requesting intervention in this proceeding, was an impermissible *ex parte* solicitation because Dickensheets failed to request that the Senator serve the letter objecting to the subject application on the parties. *See* 47 C.F.R. § 1.1210. Consequently, we herein admonish Dickensheets for his failure to comply with the Commission's *ex parte* rules.

[2] *See* n.8, *infra*.

[3] Furthermore, Dickensheets contends that approval of the assignment application will result in WVRC's ownership of five stations in the relevant market, since WVRC has also acquired another station in the market, WKKW(FM), Clarksburg, West Virginia. However, a staff engineering study reveals that the principal community contour of WKKW(FM) does not overlap any of the principal community contours of Charleston stations that WVRC proposes to co-own. Therefore, that station is not located in the same radio market. *See* 47 C.F.R. 73.3555(a)(3)(ii).

tion cannot be evaluated on the basis of this data, which were neither in statistical form nor published at the time that the assignment application was filed. WVRC and Franklin additionally submit trend data as an alternative showing in order to demonstrate a three year average combined audience share of less than 25 percent for the four stations that WVRC proposes to own.[4]

5. The text of the local ownership rule provides that "[i]n radio markets with 15 or more commercial radio stations, a party may own up to 2 AM and 2 FM commercial stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest." 47 C.F.R. § 73.3555(a)(1)(ii). *See Memorandum Opinion and Order and Further Notice of Rule Making in MM Docket No. 91-140*, 7 FCC Rcd 6387 (1992)(*"Memorandum Opinion and Order"*). The note under paragraph (a)(1)(ii) states:

> Note: When evaluating audience share evidence submitted under Section 73.3555(a)(1)(ii), the Commission will consider data that eliminates statistical anomalies, provides a better focused survey area, or includes revenue data or other relevant information. Where applicants certify that they do not have readily available audience share data, they may substitute other information that can serve as a proxy for such data. *See Memorandum Opinion and Order* in MM Docket No. 91-140, FCC 92-361 (released Sept. 4, 1992).

Generally, the language of the rule is the best and most reliable index of its meaning when the rule is clear and unequivocal. *See Viacom International, Inc. v. FCC*, 672 F.2d 1034, 1040 (2d Cir. 1982). Here, however, the rule is ambiguous because, while the note expands on what type of additional or substitute evidence may be relevant when evaluating audience share data, the rule does not state what time period is applicable to evidence of the combined audience share. Because the rule does not specify how to determine which data to use as evidence of the combined audience share, it is appropriate to consider the purpose for and background of the revisions to the local ownership rule as well as the practical consequences of Bristol's assertion that the most recent Arbitron data must be considered when evaluating audience share, regardless of whether those data were published at the time that the application was filed. *See New York State Commission on Cable Television v. FCC*, 571 F.2d 95, 98 (D.C. Cir. 1978), *cert. denied* 439 U.S. 820 (1978).

6. In the *Report and Order* in MM Docket No. 91-140, the Commission significantly relaxed the local and national radio ownership rules. *See Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992)(*"Report and Order"*). The local ownership rule provided for numerical caps for local radio markets and a 25 percent audience share limit, to ensure that one entity would not be able to acquire a disproportionate share of the local market. 7 FCC Rcd at 2780. The *Report and Order* and the rules adopted in it indicated that we would evaluate the audience share for ownership combinations in markets of 15 or more stations based on the most recent published audience survey data from Arbitron, or other widely-used published ratings available at the time that the application was filed. *See* 7 FCC Rcd at 2780, 2781-82 ("Accordingly, when an entity owning stations in a market applies for an additional station in that market, the relevant share data for the market will be determined with reference to the most recent audience data for the market at the time its application is filed"); and 2798 ("the most recent published audience share data available at the time an application is filed shall be used to calculate the combined audience share..."); *see also Report and Order*, 7 FCC Rcd at 2798, Appendix C (Section 73.3555(a)(3)(iv)).[5]

7. On reconsideration, we reaffirmed our intention to focus on market concentration in addition to limiting the number of stations an entity may acquire in a market. However, we modified our approach to measuring concentration by evaluating audience share data. *See Memorandum Opinion and Order*, 7 FCC Rcd at 6396-6400. First, in markets with 15 or more stations, the local ownership rule was amended to require applicants to demonstrate that the proposed acquisition will not result in excessive concentration. It was presumed that a combined audience share which exceeds 25 percent will lead to undue local concentration. *See Memorandum Opinion and Order*, 7 FCC Rcd at 6396-97, 6399. We also addressed the availability of audience share data and the use of that data to demonstrate compliance with the limit on concentration. In this regard, the rule was revised to permit parties to submit data that improves on the accuracy of regularly available published audience share data from Arbitron or other ratings services or to make alternative showings where the applicant certifies that regular survey data are not available (*i.e.*, not in the applicant's possession, publicly available or obtainable without undue expense). *See Memorandum Opinion and Order*, 7 FCC Rcd at 6397-6400; 47 C.F.R. § 73.3555(a)(1)(ii) note.

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[4] WVRC and Franklin also note that Bristol is the licensee of an AM/FM combination in Charleston, West Virginia, and brokers time on a Miami, West Virginia station, all of which are part of the market at issue here. Moreover, WVRC and Franklin assert that Bristol has demonstrated an anti-competitive motivation for challenging the proposed assignment, based on Bristol's failure to disclose the existence of its own time brokerage agreement and the combined audience share of its co-owned stations in the Charleston metro market. However, Bristol has standing to challenge the subject application by virtue of its status as a market competitor. *See Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). Consequently, Bristol's position in the market is not relevant to our inquiry here, since WVRC and Franklin have neither argued nor demonstrated that Bristol's petition is a strike pleading. *See Radio Carrollton*, 69 FCC 2d 1139, 1150-51 (1978), *clarified*, 69 FCC 2d 424 (1978), *recon. denied*, 72 FCC 2d 264 (1979), *aff'd sub nom Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041 (1981).

[5] As noted above, the language of Section 73.3555(a)(3)(iv) in the Appendix to the *Report and Order* expressly refers to the most recent *published* audience data available at the time that the application is filed with the Commission. Thus, we reject Bristol's argument that the reference in the text of the *Report and Order* to the most recent audience share data for the market at the time the application is filed contemplated the use of data contained in the most recent survey, regardless of whether the results of that survey have been published or are available.

8. However, we emphasized that audience share is best measured with widely-used audience survey data such as Arbitron because these data are probative and accessible measures of market power. *Memorandum Opinion and Order,* 7 FCC Rcd at 6397. Therefore, we stated that if audience share data for the market are readily available from Arbitron or a similarly published ratings service, the applicant will be required to provide that audience share data. However, because the rule was modified to provide for the use of alternative data and additional showings, the text of Section 73.3555(a)(3)(iii) adopted in the *Memorandum Opinion and Order,* did not include the reference to "the most recent published audience share available at the time that the application is filed with the Commission." This was evidently a rule drafting error because when Arbitron or other similar independent survey data are submitted, we intended to continue to evaluate audience share based on the most recent published survey data available at the time that the application is filed. Nothing in the *Memorandum Opinion and Order* indicates a different intention. *See Memorandum Opinion and Order,* 7 FCC Rcd 6397-6400.[6] Therefore, we believe that it is reasonable to interpret the rule to require applicants to demonstrate that the proposal will not result in excessive local concentration, and that *prima facie* evidence of excessive local concentration is a combined audience share exceeding 25 percent, based upon the most recent audience share data available at the time that the application is filed. *Memorandum Opinion and Order,* 7 FCC Rcd at 6396-97 ("We thus affirm our decision under the new ownership limits to evaluate showings of audience share in approving acquisitions..."). When Arbitron or other widely-available independent survey data are submitted, evidence of the combined audience share will be evaluated based on the most recent published survey data available at the time the application is filed.

9. This interpretation of the local ownership rule is also consistent with our intention for the audience share inquiry to operate as a secondary screening mechanism after application of numerical station ownership limits, in markets of 15 or more stations. Thus, the audience share component of the rule is an additional safeguard intended to identify potential problems with concentration that may threaten diversity and competition. *See Memorandum Opinion and Order,* 7 FCC Rcd at 6398; *Report and Order,* 7 FCC Rcd at 2779-81, n.106. Bristol argues that continued scrutiny of the relevant audience share data prior to grant of the application is mandated by our conservative approach to revising the local ownership rules. However, the 25 percent figure was chosen in order to strike a balance between permitting the radio industry to take advantage of scale economies and preventing undue concentration of control. In this regard, the 25 percent audience share benchmark may be more restrictive than antitrust concerns mandate and is purposefully conservative. *See Report and Order,* 7 FCC Rcd at 2780. Under these circumstances, we believe that it is not inappropriate or inconsistent with our policies to evaluate audience share in light of the most recent published survey data available at the time that the application is filed, rather than requiring an evaluation based on the very latest data from Arbitron or another ratings service that may become available during the pendency of an application.

10. In addition, we were "concerned with preventing excessive concentration, not with freezing audience shares at a prescribed level." *Memorandum Opinion and Order,* 7 FCC Rcd at 6397. Accordingly, we stated that divestiture would not be required where station combinations come to exceed a 25 percent audience share after acquisition. *Id.; Report and Order,* 7 FCC Rcd at 2783. But Bristol argues that the Commission's decision not to require divestiture does not indicate that the rule was intended to cut off the audience share inquiry as of the date that the application was filed. We disagree. When we originally decided that post-acquisition increases in audience share over the 25 percent measure would be generally irrelevant, we at the same time similarly stated that the relevant audience share measure for application processing purposes is the most recent data available at the time the application is filed. *See* paragraph 6, *supra.* As noted above, the subsequent omission of this in the rule was inadvertent and, in any event, would make little sense in light of the overall purpose of requiring applicants to submit audience share data.

11. We intended for the audience share measure to be relatively simple to ascertain and demonstrate, consistent with our objective to craft a rule that would be as simple to apply as possible. *See Memorandum Opinion and Order,* 7 FCC Rcd at 6393, 6397 n.62; *Report and Order,* 7 FCC Rcd at 2781. Moreover, the rule must be fair to applicants in light of their decision to expend time, money and other resources by entering into either a contractual agreement to purchase radio stations or an application to build new facilities. To evaluate a transaction based on the most recent data from Arbitron or another ratings service available at the time of grant, even if that data were published after the application is filed, as Bristol and Dickensheets suggest, would subject the parties to the transaction to significant uncertainty. Moreover, evaluating concentration by using the audience share data available at the time that the application is filed will minimize the Commission's administrative costs, enabling us to make more efficient use of our limited staff and other resources. The benefit of this interpretation of the rule is therefore crucial to avoiding delay in processing applications which implicate the ownership rules.

12. Furthermore, imposing a requirement that the parties continue to update the audience share data after the application is filed could result in additional expense at a time when the majority of radio broadcasters face severe economic and financial stress. *See Report and Order,* 7 FCC Rcd at 2760-61, 2776; *Memorandum Opinion and Order,* 7 FCC Rcd at 6387-88 n.3. Therefore, we will not generally require applicants to amend their applications, pursuant to 47 C.F.R. § 1.65, to report changes in audience share based upon data which is published or becomes available after the application is filed. *See Report and Order,* 7 FCC Rcd at 2780-81. In this regard, we believe the benefits to be gained by affording applicants certainty and reducing their potential application costs, as well as minimizing the pro-

[6] In this regard, we consider audience share data from Arbitron or any other entity that conducts ratings on a regular basis to be "published" when that data is officially released by the ratings service in written form, or in another widely legible form, such as a computer disk.

cessing burdens on the Commission, outweigh any probative value of data which is published or becomes available after the application is filed. However, consistent with our approach in evaluating other evidence that eliminates statistical anomalies in ratings data, we will continue to review carefully objections to any acquisition which, at the time of filing, resulted in a combined audience share of 25 percent or less, but which significantly exceeds the share cap during the pendency of the application, based upon audience data which comes to our attention after the application is filed.[7]

13. In this case, the evidence demonstrates a combined audience share of 18.6 percent for the stations at issue, based on the Spring 1992 Arbitron ratings, the most recent published Arbitron data available at the time that the application was filed.[8] This evidence does not demonstrate *prima facie* excessive concentration. Moreover, there is no indication that the combined audience share of the stations proposed for common ownership has, during the pendency of the subject application, reached a level warranting further review. We find that a post-filing increase to a share of 27.5 percent is not sufficiently significant to raise a substantial and material question of fact. We therefore need not review or address the alternative showing submitted by WVRC and Franklin to show compliance with the share limit.[9]

14. *Other Matters.* Because the application is otherwise acceptable and the parties are otherwise qualified, the application may be granted without further consideration of the concentration issue.[10] *See Memorandum Opinion and Order,* 7 FCC Rcd at 6397 n.62, 6399 n.77. Dickensheets also makes a number of cursory allegations purportedly to demonstrate that the application should be denied on other grounds. Dickensheets requests that we review WVRC's hiring practices at its other stations and contends that WVRC has terminated employees on the basis of their age. However, the employment rules applicable to broadcast stations do not expressly cover discrimination based on age. *See* 47 C.F.R. § 73.2080. Furthermore, there are presently no pending equal employment complaints against WVRC's other stations, and Dickensheets thus fails to demonstrate that grant of the application is *prima facie* inconsistent with the public interest, and we need not review WVRC's hiring practices here. *See Astroline Communications Co. v. FCC,* 857 F.2d 1556 (D.C. Cir. 1988). Dickensheets' other allegations concerning the program format at another station owned by WVRC and the provision of news programming by a co-owned news service to its Charleston station involve matters that are not subject to Commission regulation. *See FCC v. WNCN Listeners Guild,* 450 U.S. 582, 585 (1981). Moreover, Dickensheets' general observations concerning the political aspirations of a WVRC principal, WVRC's advertising rates and WVRC's general business practices do not implicate any Commission rule or policy. Therefore, these allegations are also insufficient to demonstrate that grant of the application would be *prima facie* inconsistent with the public interest.

15. Dickensheets also alleges that WVRC has prematurely assumed control of WCAW(AM)/WVAF-FM. However, WVRC's response makes it clear that Franklin continues to exercise control over programming, employment decisions and the finances of the subject stations. Although WVRC has apparently purchased time on WCAW(AM) in order to broadcast local professional baseball games, Dickensheets has demonstrated nothing improper about this arrangement or any other action taken by WVRC in anticipation of the Commission's approval of this assignment transaction. WVRC also states that it has not entered into any agreements with program suppliers and has not otherwise requested that programming be held for airing on WCAW(AM)/WVAF-FM pending approval of the subject assignment application. Accordingly, we conclude that Dickensheets has failed to raise a substantial and material question of fact which would require further inquiry. Dickensheets' bare allegation that WVRC moved the WKWS(FM) transmitter in violation of the Commission's rules is also completely unsubstantiated, and fails to make a *prima facie* case since it is not based on any duly supported specific allegations of fact.

16. In view of the foregoing, IT IS ORDERED, That the application for consent to assign the licenses of WCAW(AM)/WVAF-FM, Charleston, West Virginia, from Franklin Communications Partners, L.P. to West Virginia Radio Corporation of Charleston, File Nos. BAL-921230EA, BALH-921230EB, IS HEREBY GRANTED. IT IS FURTHER ORDERED, That the petition to deny that application, filed February 10, 1993 by Bristol Broadcasting Company, Inc. and the letter filed February 10, 1993 by John W. Dickensheets, when considered as an informal objection pursuant to 47 C.F.R. § 73.3587, ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[7] As we have indicated in a different context, we will carefully review the circumstances through which any station group reaches or exceeds the permissible local market share. Specifically, in adopting the rules originally, the Commission said that it would consider requiring divestiture if the combined market share of the commonly owned stations reached forty percent. *See Report and Order,* 7 FCC Rcd at 2783 n.109.

[8] The joint opposition contains a letter from Arbitron that states that the Fall 1992 ratings for the Charleston metro market were published on Jaauary 21, 1993. The letter also states that the only release of data prior to this date was two days earlier, on January 19, 1993, when the Arbitron "Advances" service provided subscribers with limited ratings data to be released in the printed Arbitron book. This letter directly rebuts Dickensheets' speculative assertion that WVRC was informed of the results of the Fall 1992 Arbitron survey before publication.

[9] Bristol argues that it is not appropriate to evaluate the proposed combination based on the Spring 1992 Arbitron survey because the sale of WCAW(AM)/WVAF-FM to Franklin and the sale of WCHS(AM)/WKWS-FM to WVRC were both pending during that rating period. However, Bristol's assertion that these pending sales affected the ratings of the stations in the Spring 1992 survey is unsupported and therefore only speculative.

[10] We note that applications for construction permits for minor modifications of the licenses of both WCAW(AM) and WVAF(FM) were granted during the pendency of the assignment application at issue here. However, staff engineering review indicates that grant of these modifications does not alter the relevant market analysis for the combination proposed here.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN	File Nos. 38-DSS-MP/ML-93
TELEPHONE	39-DSS-MP/ML-93
AND TELEGRAPH	40-DSS-MP/ML-93
COMPANY	

Application for Modification of Construction Permits and Licenses for the Telstar 401, 402 and 403 Satellites

ORDER AND AUTHORIZATION

Adopted: July 6, 1993; Released: July 21, 1993

By the Chief, Domestic Facilities Division:

1. American Telephone and Telegraph Company (AT&T) has applied to modify the milestone dates for its Telstar 401, 402 and 403 domestic fixed-satellites.[1] No comments were filed on this application. For the reasons discussed below, AT&T's application is granted.

2. AT&T was authorized to construct, launch and operate its Telstar 401 and 402 satellites in November 1988; Telstar 403 was authorized as an on-ground spare.[2] The authorizations were modified in March 1990 and September 1990.[3] These satellites are hybrid satellites that will operate in both the 4/6 GHz (C-band) and the 12/14 GHz (Ku-band) frequency bands. The C-band portions of these satellites are intended to replace AT&T's C-band Telstar 301 and 302 satellites, which are reaching their end-of-service lives. Telstar 401 is assigned to the 97^0 W.L. orbital location and Telstar 402 is assigned to 89^0 W.L. AT&T's current milestone schedule for these satellites is:

	Construction Completion	Launch
TELSTAR 401	September 1993	December 1993
TELSTAR 402	February 1994	May 1994
TELSTAR 403	July 1993	

3. AT&T seeks one to five month extensions of time in which to complete construction of its TELSTARs 401, 402 and 403 satellites and corresponding extensions to launch TELSTARs 401 and 402. AT&T asserts that these extensions are necessary because unanticipated difficultes with suppliers' equipment has caused some delays in the construction process. In support, AT&T states that during reliability testing, certain key mechanical and electrical devices failed or failed to perform at the specified values. Because of these, and other failures, certain components had to be redesigned and reprocured, causing delays in the construction of the satellites.

4. Generally, extensions of implementation milestone dates are granted when the delay in implementation is due to circumstances beyond the control of the licensee. The circumstances presented by AT&T are consistent with this policy. AT&T has already commenced construction of the Telstar 4 satellites, construction is continuing, and the requested extensions are brief. Grant of this extension would serve the public interest.

5. Accordingly, pursuant to Section 0.291 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.291, IT IS ORDERED that Application File Nos. 38/39/40-DSS-MP/ML-93 ARE GRANTED and the milestone schedule as specified in American Telephone and Telegraph Company, 5 FCC Rcd 5590 (1990) IS MODIFIED as follows:

	Construction Completion	Launch
TELSTAR 401	September 1993	December 1993
TELSTAR 402	February 1994	May 1994
TELSTAR 403	October 1994	

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division

[1] *See* Public Notice, Report No. DS-1295 (March 24, 1993).
[2] American Telephone and Telegraph Company, 3 FCC Rcd 6980 (1988).
[3] American Telephone and Telegraph Company, 5 FCC Rcd 1184 (1990) and American Telephone and Telegraph Company, 5 FCC Rcd 5590 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of
Hualapai Broadcasters, Inc.
Licensee, Station KRCY
Kingman, Arizona

MEMORANDUM OPINION AND ORDER

Adopted: July 14, 1993; Released: July 21, 1993

By the Chief, Mass Media Bureau:

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a Notice of Apparent Liability (NAL), 7 FCC Rcd 6261 (1992), assessing a forfeiture of twelve thousand five hundred dollars ($12,500) on Hualapai Broadcasters, Inc., for violation of the anti-lottery broadcast provisions of the United States Code, 18 U.S.C. Section 1304, and Section 73.1211 of the Commission's Rules, and (2) a response to the NAL filed October 21, 1992, by Hualapai Broadcasters.

2. In its response, Hualapai Broadcasters concedes broadcast of commercials for a slot machine tournament to be held at the Edgewater Hotel and Casino. It maintains, however, that it aired the commercials in good faith, relying on the legal opinion of a recognized authority on gambling law to the effect that slot machine tournaments were not "lotteries" within the context of Commission rules.[1] Hualapai Broadcasters notes further that it has never been cited for a violation of Commission rules and that it is financially unable to pay such a large forfeiture. In this latter regard, Hualapai Broadcasters states that it is a small company with limited resources, operating at a loss in a part of the country severely affected by the recession.

3. As we noted in the NAL, reliance upon inaccurate information concerning the legality of certain advertising does not absolve a licensee of responsibility for its broadcast. At the same time, though, such reliance can serve as evidence that the licensee made an effort to assess its obligations, that its assessment was reasonable, if erroneous, and that it was made in good faith. Under these circumstances, we will eliminate the penalty imposed in the NAL for repeated violation, take into consideration the element of good faith, and reduce the forfeiture amount to three thousand five hundred dollars ($3,500).

4. Accordingly, Hualapai Broadcaster's request IS GRANTED to the extent indicated herein, and IS DENIED in all other respects. IT IS ORDERED that Hualapai Broadcasters, Inc., licensee of Radio Station KRCY, Kingman, Arizona, FORFEIT to the United States the sum of three thousand five hundred dollars ($3,500) for the violation of 18 U.S.C. Section 1304 and Section 73.1211 of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission, at the address indicated in the attachment to this Memorandum Opinion and Order, a check or similar instrument payable to the Federal Communications Commission. In regard to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.115 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Mass Media Bureau

[1] The opinion that certain slot machine tournaments required skill sufficient to take them out of the definition of "lottery" was contained in a paper, "A Guideline for Advertising Legally," written by I. Nelson Rose, Attorney at Law. This paper was provided Haulapai Broadcasters by the Edgewater Hotel and Casino. Mr. Rose's opinion is, in fact, contrary to Commission precedent.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-66

In the Matter of

Amendment of Section 73.202(b),	RM-7139
Table of Allotments,	RM-7368
FM Broadcast Stations.	RM-7369
(Lincoln, Osage Beach, Steelville and Warsaw, Missouri)	

ORDER TO SHOW CAUSE

Adopted: July 1, 1993; Released: July 21, 1993

Comment Date: September 13, 1993

By the Chief, Allocations Branch:

1. The Commission issued a *Notice of Proposed Rule Making*, 5 FCC Rcd 1119 (1990), proposing the substitution of Channel 228C3 for Channel 228A, Osage Beach, Missouri, and the modification of the license for Station KYLC(FM) accordingly, at the request of KRMS-KYLC, Inc. ("KRMS-KYLC"). To accommodate Channel 228C3 at Osage Beach, KRMS-KYLC proposed the substitution of Channel 253A for Channel 229A at Warsaw, Missouri. In response to the *Notice*, a counterproposal was filed by Twenty-One Sound Communications, Inc. ("Twenty-One"), permittee of Station KNSX(FM), Channel 227C2, Steelville, Missouri, requesting the substitution of Channel 227C1 for Channel 227C2 at Steelville and modification of its construction permit for Station KNSX(FM) accordingly; and the substitution of Channel 265A for Channel 228A, at Osage Beach and modification of the license of Station KYLC(FM) accordingly. We dismissed the counterproposal on the grounds that Twenty-One failed to include an affidavit verifying that the statements contained in its counterproposal were accurate to the best of its knowledge, as required by Section 1.52 of the Commission's Rules, and KRMS-KYLC's petition was granted. *See Report and Order*, 7 FCC Rcd 3015 (1992). Twenty-One filed a petition for reconsideration, arguing that the Commission's staff should not have dismissed the counterproposal for failure to verify. No comments were filed in response to the petition for reconsideration.

2. As noted above, Twenty-One's counterproposal requires the substitution of Channel 265A for Channel 228A, Osage Beach, to accommodate its proposed substitution of Channel 227C1 for Channel 227C2 in Steelville. In order to proceed with our analysis of Twenty-One's petition for reconsideration in this proceeding, it is necessary to issue an *Order to Show Cause* to Station KYLC(FM), Channel 228A, Osage Beach, Missouri, why its license should not be modified to specify operation on Channel 265A, as follows:

Community	Present	Proposed
Osage Beach, Missouri	228A	265A

The Osage Beach channel substitution can be made at the licensed site of Station KYLC(FM).[1] Twenty-One has expressed its willingness to reimburse Station KYLC(FM) for the reasonable costs it would incur in changing to Channel 265A, pursuant to the Commission's guidelines in *Circleville, Ohio*, 8 FCC 2d 159 (1967).

3. The Commission has made a preliminary determination that the public interest may be advanced by the substitution of Channel 265A for Channel 228A at Osage Beach to accommodate the substitution of Channel 227C1 for Channel 227C2 at Steelville, Missouri, in the event that Twenty-One's petition for reconsideration is granted and its counterproposal is considered superior to the proposal of KRMS-KYLC. A final determination regarding these amendments to the Table must await the outcome of this *Order to Show Cause* concerning the license modification of Station KYLC(FM), Osage Beach, Missouri, as discussed herein. Although KRMS-KYLC is provided an opportunity to object to the ordered channel change, this Order does not afford additional opportunity to comment on the merits of the conflicting proposals or the petition for reconsideration, or for the acceptance of additional counterproposals.

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, KRMS-KYLC, Inc., licensee of Station KYLC(FM), Osage Beach, Missouri, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 265A as proposed herein instead of the present Channel 228A.

5. Pursuant to Section 1.87 of the Commission's Rules, KRMS-KYLC, Inc., may, not later than **September 13, 1993,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on KRMS-KYLC Inc., to furnish additional information. If KRMS-KYLC, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, KRMS-KYLC Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order to Show Cause* to:

[1] The coordinates for Channel 265A at Osage Beach are 38-07-29 and 92-40-39.

KRMS-KYLC Inc.
c/o Bruce A. Eisen
Kaye, Scholer, Fierman, Hays & Holder
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for KRMS-KYLC Inc.)

7. A copy of any comments filed by KRMS-KYLC Inc. in this proceeding should be served as follows:

Randal L. Wachter
Twenty-One Sound Communications, Inc.
3418 Douglas Road
Florissant, Missouri 63034

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-206

In the Matter of

Amendment of Section 73.202(b), RM-8284
Table of Allotments,
FM Broadcast Stations.
(Hermantown, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1993; Released: July 21, 1993

Comment Date: September 13, 1993
Reply Comment Date: September 28, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Bruce F. Elving ("petitioner"), seeking the allotment of Channel 221A to Hermantown, Minnesota, as that community's first local service. Petitioner provided an engineering study in support of the petition and indicated he would apply for the channel, if allotted.

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Hermantown, Minnesota. Channel 221A can be allotted to Hermantown consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 2 kilometers (1.2 miles) northeast of the community.[1] The site restriction will prevent a short spacing to Channel 221A, Station WCMP-FM, Pine City, Minnesota. Since Hermantown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment.

3. In view of the fact that the proposed allotment would provide a first local service to Hermantown, Minnesota, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hermantown, Minnesota	---	221A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 13, 1993,** and reply comments on or before **September 28, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner as follows:

Bruce F. Elving
P.O. Box 336
Esko, Minnesota 55733-03336

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 221A at Hermantown are 46-48-47 and 92-14-51.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-98

In the Matter of

Amendment of Section 73.202(b), RM-8207
Table of Allotments,
FM Broadcast Stations.
(Rushford, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1993; Released: July 21, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 2741 (1993), issued in response to a petition filed by Wheeler Broadcasting of Minnesota, Inc. ("petitioner"), proposing the substitution of Channel 257C3 for Channel 257A at Rushford, Minnesota. Petitioner also requested modification of its license for Station KWNO-FM, Channel 257A, to specify operation on Channel 257C3. Petitioner filed comments in which it reaffirmed its interest in the channel.[1] No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 257C3 for Channel 257A at Rushford, Minnesota, since it would provide expanded reception service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[2] In addition, we have authorized a modification of the license for Station KWNO-FM, Channel 257A, Rushford, Minnesota, to specify operation on Channel 257C3, in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 7, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Rushford, Minnesota	257C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KWNO-FM, Rushford, Minnesota, IS MODIFIED to specify operation on Channel 257C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Wheeler Broadcasting of Minnesota, Inc., licensee, of Station KWNO-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] In response to the *Notice*, petitioner also provided an affidavit verifying the statements in the petition.
[2] The coordinates for Channel 257C3 are 43-50-51 and 91-42-11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-120

In the Matter of

Amendment of Section 73.202(b), RM-7968
Table of Allotments,
FM Broadcast Stations.
(Hartford, Vermont)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1993; Released: July 21, 1993

By the Chief, Allocations Branch:

1. At the request of Family Broadcasting, Inc. ("petitioner"), permittee of Station WGLV-FM, Channel 282A, Hartford, Vermont, the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 3245 (1992) ("*Notice*") proposing the substitution of Channel 282C3 for Channel 282A at Hartford and modification of Station WGLV-FM's authorization on the higher class channel. Petitioner filed comments reiterating its intention to apply for Channel 282C3 and an engineering statement.[1] No other comments were received.

2. The *Notice* stated that Channel 282C3 could be allotted at petitioner's specified site in compliance with the minimum distance separation requirements of the Commission's Rules. However, we questioned, given the terrain obstructions found by our engineering staff, whether petitioner's proposal would comply with the principal city coverage requirements. Therefore, petitioner was requested to provide information in its comments to establish a *prima facie* showing of its ability to comply with the requirements of Section 73.315 of the Commission's Rules.

3. In response, petitioner states that its referenced coordinates are an "assumed site" and from that site its proposal meets both the minimum mileage separation requirements and the requirements of Section 73.315 the Commission's Rules. Although the Commission indicated that the petitioner would have to use unconventional Class C3 facilities at its proposed site to implement its upgrade at Hartford, petitioner argues that it is Commission policy not to evaluate specific terrain data in allotment proceedings, citing *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988) ("*Woodstock*").[2] Nevertheless, petitioner agrees with the Commission's analysis that from its "assumed site" there are terrain obstacles which prevent line-of-site into Hartford using "realistic" tower heights. However, petitioner contends that it reserves the right to assess available tower sites at the time of the submission of its application for construction permit. Petitioner notes that there is a "plethora of sites" on which it could locate a tower and it would be waste of time, energy, and money to require petitioner to perform extensive viability studies on a tower at an arbitrary site. Finally, petitioner submits it is willing to expend the resources to find a site, secure FAA and local approval, and perform propagation studies when it submits its application to upgrade its facilities at Hartford.

4. After reviewing the pleadings before us, we find that Channel 282C3 cannot be allotted to Hartford in compliance with the Commission's technical requirements. At the allotment stage the Commission requires that a theoretical site exists from which a station can be operated in compliance with our rules.[3] Ordinarily, the Commission's concerns at the allotment stage do not require detailed showings concerning the availability and suitability of a specific site. Rather, we require a showing demonstrating only that such an area does exist.[4] However, in some cases, additional information may be required before an allotment can be made. In this case, our engineering analysis revealed that from the site specified by petitioner, it would be necessary to employ unconventional Class C3 facilities in order to provide the requisite city-grade coverage to Hartford. In response to our request for additional information, petitioner states its proposal does not fit the *Woodstock* exception since it has not secured a specific site. In addition, petitioner states that "it would be both unnecessarily expensive... to attempt to secure a site within the allocation area, because that would unnecessarily limit [petitioner's] freedom to obtain the best available site at the time the application is filed." We find petitioner has failed to provide any data to address our concerns regarding city-grade coverage to Hartford. Rather, it merely states that "there are a large number of potential transmitter sites for a broadcast station within any proposed allocation area." Therefore, we are compelled to deny petitioner's proposal since no particular site, taking into account terrain considerations, has been explored and no specific showing demonstrating the ability to provide a clear line-of-sight service has been provided. To do otherwise could result in the allotment of a substandard channel.[5]

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[1] We note petitioner's engineering statement was late filed and was not accompanied by a motion to accept. Nevertheless, we will accept the statement in the interest of compiling a complete record in this proceeding. In addition, petitioner filed an "Engineering Statement" supplement prior to the issuance of the *Notice* in this proceeding. In that statement, petitioner acknowledges that a 550 meter tower would have to be erected in order for the proposed antenna to provide line-of-sight service to the entire community of Hartford. Petitioner notes a tower of this height will require great care in the selection of a site, and petitioner's specified site may not be the best for overcoming shadowing concerns.

[2] In *Woodstock*, the Commission set forth a limited exception to its allotment policy of predicting city-grade coverage based upon an assumption of uniform terrain rather than an analysis of the terrain characteristics of specific radials. This exception applies only to existing stations, such as petitioner's, where the allotment will not be opened up for competing applications.

[3] *See e.g., West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988), *recon. denied*, 6 FCC Rcd 6975 (1991), *Stamping Ground, Kentucky*, 5 FCC Rcd 1772 (1990).

[4] *See Key West, Florida*, 3 FCC Rcd 6423 (1988).

[5] *See Brownsville, Newport, Oakridge, and Reedsport, Oregon*, 3 FCC Rcd 3968 (1988); and *Wilmington, Burgaw, Hamlet, Rockingham, and Laurel Hill, North Carolina; Norfolk-Portsmouth-Newport News-Hampton, Virginia*, 6 FCC Rcd 6969 (1991).

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That the petition filed by Family Broadcasting, Inc. (RM-7968) IS DENIED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-104

In the Matter of

Amendment of Section 73.202(b), RM-8209
Table of Allotments,
FM Broadcast Stations.
(Greenwood, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 30, 1993; Released: July 21, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 2815 (1993), issued in response to a petition filed by Team Broadcasting Co., Inc. ("petitioner"), proposing the substitution of Channel 282C2 for Channel 282C3 at Greenwood, Mississippi. Petitioner also requested modification of its construction permit for Station WGNL(FM), Channel 282C3, to specify operation on Channel 282C2. Petitioner filed comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 282C2 for Channel 282C3 at Greenwood, Mississippi, since it will provide expanded service to the community. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[1] Channel 282C2 is short spaced to Channel 282A, Station WUMI, State College, Mississippi. However, the construction permit for Station WUMI, Channel 282A, was modified in MM Docket 92-179 to specify operation on Channel 283C3. *See Report and Order*, 7 FCC Rcd 7575 (1992). Station WUMI has a construction permit for Channel 283C3 that is fully spaced to Channel 282C2 at Greenwood. Therefore, a grant of a license for Station WGNL(FM) at Greenwood may be withheld until Station WUMI, State College, is licensed on the new channel. In addition, we have authorized a modification of the construction permit for Station WGNL(FM), Channel 282C3, to specify operation on Channel 282C2, in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 7, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Greenwood, Mississippi	230A, 256C, 282C2

4. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the folowing:

PDB Corporation, State College
Station WUMI
5880 Ridgewood Road, D-40
Jackson, Mississippi 39211

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station WGNL(FM), Greenwood, Mississippi, IS MODIFIED to specify operation on Channel 282C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Team Broadcasting Co., Inc., permittee of Station WGNL(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

[1] The coordinates for Channel 282C2 at Greenwood are 33-28-50 and 90-09-35.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-204

In the Matter of

Amendment of Section 73.202(b), RM-8266
Table of Allotments,
FM Broadcast Stations.
(Provincetown, Massachusetts)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 28, 1993; Released: July 21, 1993

Comment Date: September 13, 1993
Reply Comment Date: September 28, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Lower Cape Communications, Inc. ("petitioner"), requesting the substitution of Channel 221A for noncommercial Channel *220A at Provincetown, Massachusetts.[1] Petitioner also requests modification of its license for Station WOMR, Channel *220A, to specify operation on Channel 221A and that the Channel be reserved for noncommercial educational use.

2. In support of its request, petitioner contends that substitution of Channel 221A for Channel *220A at Provincetown would allow it to operate as a six kilowatt facility. According to petitioner, Provincetown is located on the outer edge of the 47 dBu service contour of Channel 6 Television Station WLNE, New Bedford, Massachusetts. Because of the location, petitioner states that Station WOMR is precluded by the provisions of Section 73.525 of the rules from operating on Channel *220 with full Class A facilities using a non-directional circularly polarized antenna. Petitioner further states that Station WOMR is required to protect co-channel Television Station WUMB, Boston, Massachusetts, against interference and is, therefore, limited on Channel *220A to a non-directional power of approximately 1.0 kilowatt from an antenna 100 meters above average terrain. Although petitioner indicates that removal of Channel *220A at Provincetown would have no preclusionary effect on Channels 218, 219 and 220, it did not provide any information to support this statement and should do so in its comments.

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Televison Channel 6. Here, potential interference to Station WLNE, New Bedford, Massachusetts, and Station WUMB, Boston, Massachusetts, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use. The allotment and reservation of a commercial channel appears to be the only way to provide a full class A noncommercial educational channel to Provincetown. A Commission engineering analysis indicates, however, that Channel 221A is the only channel that can be allotted to Provincetown.

4. We believe the public interest would be served by proposing to substitute Channel *221A for Channel *220A at Provincetown, Massachusetts, and to reserve the channel for noncommercial educational use. *See Rochester, Minnesota, and Clear Lake and Osage, Iowa*, 7 FCC Rcd (1992). The channel can be allotted to Provincetown in compliance with the Commission's minimum distance separation requirements at petitioner's proposed site.[2] Channel *221A at Provincetown is short spaced to the site proposed by the University of Massachusetts ("University") in its application (File No. BPED-930114ML) for Channel *220A at Falmouth, Massachusetts. However, the University filed an amendment to its application requesting that the application be processed pursuant to Section 73.215 of the Rules which provides contour protection for short spaced allotments. A Commission engineering analysis indicates that assuming maximum Class A facilities for Station WOMR, Channel *221A, Provincetown, and actual facilities for the application for Channel *220A, Falmouth, the possibility of interference has been removed. We shall also propose to modify the license of Station WOMR, Channel *220A, to specify operation on Channel *221A in accordance with the Commission's Rules.

5. In view of the foregoing, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

	Channel No.	
City	Present	Proposed
Provincetown, Massachusetts	*220A	*221A

6. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Notice* to the following:

[1] Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

[2] The coordinates for Channel *221A at Provincetown are 42-03-54 and 70-09-34.

University of Massachusetts
100 Morrissey Blvd.
Boston, Massachusetts 02125

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 13, 1993,** and reply comments on or before **September 28, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Roger H. Strawbridge, President
Lower Cape Communications, Inc.
Radio Station WOMR
6 Orissa Drive, Box 606
East Orleans, Massachusetts 02643

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 21, 1993

COST ALLOCATION MANUAL REVISIONS PUBLIC COMMENT INVITED

Local Exchange Carriers and NECA filed changes to their Cost Allocation Manuals for the separation of regulated and nonregulated costs for the quarter ended June 30, 1993. Listed below are the names of the carriers that filed revisions and the file number assigned to each revision.

Ameritech Operating Companies	AAD 93-63
Bell Atlantic	AAD 93-64
BellSouth Corporation	AAD 93-65
Centel Corporation	AAD 93-66
Cincinnati Bell Telephone	AAD 93-67
GTE	AAD 93-68
Lincoln Telephone	AAD 93-69
Nevada Bell	AAD 93-70
NYNEX Telephone Companies	AAD 93-71
Pacific Bell	AAD 93-72
Puerto Rico Telephone Company	AAD 93-73
Rochester Telephone	AAD 93-74
Southern New England Telephone Company	AAD 93-75
Southwestern Bell	AAD 93-76
United Telephone	AAD 93-77
U S West, Inc.	AAD 93-78
NECA	AAD 93-79

In addition, the following company filed a letter stating that there were no changes to its CAM for the quarter ended June 30, 1993.

American Telephone and Telegraph Company	AAD 93-62

Parties may file comments on the proposed revisions to the CAMs no later than August 23, 1993. Replies should be filed by September 7, 1993. Comments should reference the applicable AAD file number listed above. A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L ST., N.W., Room 812, Washington, D.C. 20554 and the International Transcription service (ITS), 2100 M St., N.W. Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division public reference room 2000 L St., N.W., Room 812, Washington, D.C. Copies are also available from ITS.

For further information contact Alicia Dunnigan at (202) 634-1861.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-209

In the Matter of

Amendment of Section 73.202(b) RM-8282
Table of Allotments,
FM Broadcast Stations.
(Rainelle, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993; Released: July 22, 1993

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by R-B Company, Inc. ("petitioner"), licensee of Station WRRL-FM, Channel 237A, Rainelle, West Virginia, proposing the substitution of Channel 237B1 for Channel 237A at Rainelle, and the modification of its construction permit to specify operation on the higher powered channel. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 237B1 for Channel 237A at Rainelle, since it would provide the community with a wide coverage area FM transmission service. An engineering analysis has determined that Channel 237B1 can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements at petitioner's requested site with a site restriction of 21 kilometers (13 miles) northeast to avoid a short-spacing to Station WXIL, Channel 236B, Parkersburg, West Virginia.[1] We shall also propose to modify petitioner's license for Station WRRL-FM to specify operation on Channel 237B1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 237B1 at Rainelle or require the petitioner to demonstrate the availability of an additional equivalent class channel for use.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No. Present	Proposed
Rainelle, West Virginia	237A	237B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David M. Hunsaker, Esq.
Putbrese & Hunsaker
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101-0539
(Counsel for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 237B1 at Rainelle are North Latitude 38-07-21 and West Longitude 80-37-37.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-208

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Keno, Oregon)	RM-8281

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993; **Released: July 22, 1993**

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Brett E. Miller ("petitioner") requesting the allotment of Channel 253A to Keno, Oregon, as the community's first local service.[1] Petitioner states that he will apply for the channel, if allotted.

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies ". . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Keno is not listed in the U.S. Census.[2] Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Keno is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. See, *e.g., Beaver Springs, Pennsylvania,* 4 FCC Rcd 5373 (1989), *Sargent, Nebraska,* 4 FCC Rcd 3933 (1989), *Bartow, Georgia, et al.,* 4 FCC Rcd 6876 (1989), *East Hemet, California, et al.,* 4 FCC Rcd 7895 (1989), and *Ellwood, California,* 50 Fed. Reg. 13031, published April 2, 1985.

3. We believe the public interest would be served by seeking comment on the allotment of Channel 253A to Keno since it could provide a first local service to the populace if Keno is ultimately found to be a community for allotment purposes. Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[3]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Keno, Oregon	--	253A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Brett E. Miller
11608 Blossomwood Court
Morpark, CA 93021
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and com-

[1] Although petitioner signed his request, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes,* 5 FCC Rcd 3910, n.41 (1990). The petitioner is requested to rectify this omission in his comments.

[2] We note that Keno is listed in the 1993 Rand McNally Commercial Atlas and attributed with a population of 900. However, mere geographical location is not sufficient to establish "community" status. *See, Vimville, Mississippi,* 48 FR 5974 (1983), *Hannibal, Ohio,* 6 FCC Rcd 2144 (1991), and *Columbia, California,* 56 FR 26357 (1991), 6 FCC Rcd 3292 (1991).

[3] The coordinates for Channel 253A at Keno are North Latitude 42-07-30 and West Longitude 121-55-42.

ment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-210

In the Matter of

Amendment of Section 73.202(b) RM-8283
Table of Allotments,
FM Broadcast Stations.
(Webster Springs, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993; Released: July 22, 1993

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Cat Radio, Inc. ("petitioner"), proposing the substitution of Channel 262B for Channel 262A at Webster Springs, and the modification of its construction permit (File No. BPH-920507MB) to specify operation on the higher powered channel.[1] Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 262B for Channel 262A at Webster Springs, since it would provide the community with a wide coverage area FM transmission service. An engineering analysis has determined that Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.[2] We shall also propose to modify petitioner's construction permit to specify operation on Channel 262B. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 262B at Webster Springs or require the petitioner to demonstrate the availability of an additional equivalent class channel for use.

3. Since the proposal is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank West Virginia, petitioner will be required to conform with the notification requirements of Section 73.1030(a) of the Commission's Rules.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Webster Springs, West Virginia	262A	262B

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Timothy E. Welch, Esq.
Dean George Hill & Welch
Suite 113
1330 New Hampshire Ave., N.W.
Washington, D.C. 20036
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a

[1] On December 15, 1992, petitioner prematurely filed a petition for rule making for a Class B upgrade indicating that it was the sole applicant for Channel 262A at Webster Springs, and that after its application was granted, additional information would be filed in support of the upgrade. On June 24, 1993, petitioner filed a supplement transmitting a copy of a letter from the FM Branch granting petitioner's application for Channel 262A. The application was granted on June 11, 1993 and a construction permit was issued on June 24, 1993.

[2] The coordinates for Channel 262B at Webster Springs are North Latitude 38-28-42 and West Longitude 80-24-54.

request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-211

In the Matter of

Amendment of Section 73.202(b), RM-8285
Table of Allotments,
FM Broadcast Stations.
(Arizona City, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993; Released: July 22, 1993

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Arizona City Broadcasting Corporation ("petitioner"), licensee of Station KONZ(FM), Channel 292A, Arizona City, Arizona, seeking the substitution of Channel 293A for Channel 292A and modification of its authorization accordingly to specify operation on the alternate Class A channel. Petitioner neglected to state its intention to apply for Channel 293A if allotted to Arizona City, and is requested to correct the procedural deficiency in its comments. *See* paragraph 2 of the attached Appendix.

2. In support of its proposal, petitioner states that the requested channel substitution will enable it to increase significantly its signal coverage area. In this regard, according to petitioner's engineering statement, KONZ(FM) currently provides signal coverage within its 70 dBu and 60 dBu contours to approximately 9,688 persons and 16,838 persons,[1] respectively. The substitution of Channel 293A at Arizona City would enable Station KONZ(FM) to extend its city grade and primary service coverage to approximately an additional 25,927 persons and 46,486 persons, representing an increase of 16,239 persons (167%) and 29,648 persons (176%), respectively.

3. A staff analysis confirms that Channel 293A can be allotted to Arizona City consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules without a site restriction, as specified by the petitioner.[2] However, since Arizona City is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of the Mexican government in this proposal.

4. We believe the public interest would be served by proposing the substitution of Channel 293A for Channel 292A at Arizona City since it could provide an enhanced service to the community. Therefore, we shall propose to modify the petitioner's license for Station KONZ(FM) to specify operation on Channel 293A in lieu of Channel 292A, as requested. We will not accept competing expressions of interest in this equivalent channel substitution.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to Arizona City, Arizona, as follows:

	Channel No.	
City	Present	Proposed
Arizona City, Arizona	292A	293A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Nancy L. Wolf, Esq.
Dow, Lohnes & Albertson
1255 - 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution

[1] Population figures referenced herein are based upon the 1990 U.S. Census.
[2] Coordinates used for Channel 293A at Arizona City are 32-45-21 and 111-40-13.

of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-213

In the Matter of

Amendment of Section 73.202(b), RM-7214
Table of Allotments,
FM Broadcast Stations.
(Menomonie, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 6, 1993; Released: July 22, 1993

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Jay Lellman ("petitioner"), requesting the allotment of Channel 285A to Menomonie, Wisconsin.[1] [2] Petitioner, states he will apply for Channel 285A, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 285A to Menomonie, Wisconsin, since it could provide the community with an additional FM service. Channel 285A can be allotted to Menomonie in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.4 miles) west in order to avoid a short-spacing with Station WAXX-FM, Channel 283C, Eau Clair, Wisconsin.[3]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Menomonie,[4] Wisconsin	221C3	221C3, 285A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Larry G. Fuss
Post Office Box 159
Fayetteville, Georgia 30214
(Consultant for petitioner)

6. Furthermore, IT IS ORDERED that the Secretary of the Commission SHALL SEND a copy of this *Notice* by Certified Mail, Receipt Requested, to Phillips Broadcasting Company, Inc., P.O. Box 880, Menomonie, Wisconsin 54751.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

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[1] This petition for rule making was originally dismissed by letter on the grounds that the proposal did not comply with the Commission's Rules regarding city grade coverage. *See Letter* from Assistant Chief, Policy and Rules Division, to Jay Lellman (October 31, 1990). Petitioner filed an appeal of the letter dismissal and again requested the initiation of a rule making proceeding.

After petitioner filed its appeal, we determined that an alternate site was available that would comply with the principal city coverage requirements. Therefore, using the alternate site coordinates, we now believe it is appropriate to seek comment on petitioner's proposal to allot Channel 285A at Menomonie, Wisconsin. We issue this *Notice* and will dismiss petitioner's petition for reconsideration as moot at the termination of this proceeding. We will treat petitioner's petition for reconsideration as comments to this proceeding. We note that Phillips Broadcasting Company, Inc. ("Phillips"), licensee of Stations WMEQ(AM) and WMEQ-FM, Menomonie, Wisconsin, filed an opposition to the petition for reconsideration. We will consider the opposition in conjunction with the final resolution of this proceeding. Phillips will be served with a copy of this *Notice*.

[2] Although petitioner's request indicates that the original copy of his proposal was signed by his consultant, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

[3] The coordinates for Channel 285A at Menomonie are North Latitude 44-56-28 and West Longitude 92-05-51.

[4] We note that the FM Table of Allotments erroneously misspelled the community of Menomonie. We will make the editorial change in the context of this proceeding. Since the correction is editorial in nature, a public notice and comment proceeding is unnecessary. *See* 5 USC 553(b)(A) and (B).

of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-227

In the Matter of

Amendment of Section 73.202(b),	RM-8070
Table of Allotments,	RM-8072
FM Broadcast Stations.	RM-8166
(Eatonton, Fayetteville, Greenville, Hogansville, Sparta, and Thomaston, Georgia, and Ashland and Valley, Alabama)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 6, 1993; Released: July 22, 1993

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause* (*"Notice"*), 7 FCC Rcd 6805 (1992), issued in response to two conflicting petitions for rule making. Orchon Broadcasting Company ("Orchon"), permittee of Station WEJG(FM), Channel 239A, Greenville, Georgia, requested the substitution of Channel 239C3 for Channel 239A at Greenville, Georgia, and the modification of its construction permit to specify operation on the higher class channel (RM-8070). Good Medicine Radio Georgia, Inc. ("GMR"), licensee of Station WSKS(FM), Channel 249A, Sparta, Georgia, and Design Media, Inc. ("DMI"), licensee of Station WQUL(FM), Channel 249A, Griffin, Georgia (jointly referred to as the "petitioners"), requested the substitution of Channel 249C3 for Channel 249A at Sparta and the reallotment of Channel 249C3 to Eatonton, Georgia; the substitution of Channel 248C3 for Channel 249A at Griffin and the reallotment of Channel 248C3 to Fayetteville, Georgia, and the modification of the licenses for Stations WSKS(FM) and WQUL(FM) to specify Eatonton and Fayetteville, respectively, as their communities of license. In order to accommodate the upgrades and changes of community the petitioners also requested the substitution of Channel 239A for Channel 248A at Hogansville, Georgia, and the modification of Station WEIZ(FM)'s construction permit to specify Channel 239A; the substitution of Channel 237A for Channel 239A at Greenville, Georgia, and the modification of Station WEJG(FM)'s construction permit to specify Channel 237A; the substitution of Channel 266A for Channel 237A at Thomaston, Georgia, and the modification of Station WTGA(FM)'s license to specify Channel 266A; and the substitution of Channel 238A for Channel 237A at Ashland, Alabama, and the modification of Station WASZ(FM)'s license to specify Channel 238A (RM-8072).

2. In response to the *Notice*, Radio Georgia, Inc. ("Radio"), licensee of Station WTGA(FM), Thomaston, Georgia, filed supporting comments. Orchon filed comments and a "protest." Petitioners and T. Wood and Associates, Inc. ("Wood"), permittee of Station WEIZ(FM), Channel 248A, Hogansville, Georgia, filed a counterproposal requesting the substitution of Channel 251C3 for Channel 248A at Hogansville, Georgia, and the substitution of Channel 239C3 for Channel 239A at Greenville, Georgia. In order to accommodate the upgrade at Hogansville, petitioners and Wood also request the substitution of Channel 237A for Channel 251A for Station WUAF(FM), Valley, Alabama (RM-8166).[2] Orchon filed reply comments supporting the petitioners' counterproposal.[3] Perry Communications, Inc. ("Perry"), licensee of Station WASZ(FM), Channel 237A, Ashland, Alabama, filed an unacceptable counterproposal and reply comments.[4] Petitioners, Orchon, and Pearce Broadcasting Partnership ("Pearce"), permittee of Station WUAF(FM), Channel 251A, Valley, Alabama, filed reply comments. In response to the counterproposal petitioners filed reply comments restating their intentions to apply for the respective channels.

[1] The community of Valley, Alabama, has been added to the caption.

[2] Public Notice of the counterproposal was given January 19, 1993, Report No. 1925 (RM-8166).

[3] Therefore, Orchon's comments and protest of the *Order to Show Cause* and reply comments filed by petitioners are now moot, and will not be discussed.

[4] Perry requested the substitution of Channel 238C3 in lieu of Channel 238A for Channel 237A at Ashland, Alabama. In order to accommodate the upgrade at Ashland, Perry also requested the substitution of Channel 252A for vacant but applied for Channel 238A at Holly Pond, Alabama, for which there is one application pending; and the substitution of Channel 261A for Channel 252A at Scottsboro, Alabama for Station WKEA(FM). We note that Perry filed comments requesting the upgrade and channel changes by the deadline for filing counterproposals in this docket, but included no technical showing in support of its counterproposal. Technical information and other comments supporting the counterproposal was filed by Perry on December 29, 1992, the deadline for reply comments in this docket. Therefore, the counterproposal was not filed in accordance with our Rules and is unacceptable for consideration.

In any event, we note that Perry's counterproposal is technically defective. A staff engineering analysis has determined that the substitution of Channel 238C3 for Channel 237A at Ashland at coordinates 33-24-15 and 85-59-56 would violate Section 73.315(b) of the Rules. There is a major obstruction in the line of sight path between the proposed antenna site for Channel 238C3 and the city of Ashland. The obstruction exists approximately 12 kilometers (7.5 miles) southeast from the proposed site and is severe enough that a 70 dBu signal could not be provided to Ashland. In addition, the substitution of Channel 261A for Channel 252A at Scottsboro, Alabama, is short-spaced to the proposed allotment of Channel 261C3 at Anniston, Alabama. *See* MM Docket 89-585, 6 FCC Rcd 6580 (1991), *app. for rev. pend.* It is Commission policy to decline the acceptance of proposals that are dependent upon final action in another rule making proceeding, particularly when that proceeding is contested, as is MM Docket No. 89-585. *See Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (1988), *recon. granted*, 3 FCC Rcd 6626 (1988). Therefore, we will not consider Perry's counterproposal in this proceeding.

3. **BACKGROUND**. As indicated in the *Notice*, the proposed use of Channel 249A at Sparta and the proposed use of Channel 249C3 at Eatonton are mutually exclusive. GMR contends that the reallotment of Channel 249C3 from Sparta (population 1,701)[5] to Eatonton (population 4,737) will provide Eatonton with its first full-time local transmission service, while Sparta will continue to be served by Station WHAN(FM).[6] GMR states that Eatonton is an incorporated city with a mayor, city council, volunteer fire department, numerous businesses, financial institutions and residential areas in the city. Eatonton has a variety of civic organizations such as a Lions Club, Mason Lodge and Elks Club. The city provides its own police protection and has its own post office. GMR claims that the reallotment and upgrade of Station WSKS(FM) at Eatonton will serve 83,989 persons in 4,759.5 square kilometers, which represents an increase in 55,466 persons and 2,929.6 square kilometers over the present facility.

4. Further, the *Notice* stated that the proposed use of Channel 249A at Griffin and the proposed use of Channel 248C3 at Fayetteville are mutually exclusive. DMI states the reallotment of Channel 248C3 from Griffin (population 21,347) to Fayetteville (population 5,827) will provide Fayetteville with its first local transmission service, while Griffin will continue to receive service from Stations WHIE(AM) and WKEU(AM). DMI states that neither community is located within an Urbanized Area. DMI states that Fayetteville is an incorporated city with a mayor, city post office, banks and numerous businesses. The city provides its own fire and police services, separate from county services. DMI claims that the reallotment and upgrade of Station WQUL(FM) at Fayetteville will serve 867,736 persons in 4,782.3 square kilometers, which is an increase of 744,796 persons and 2,445.4 square kilometers over the present facility.

5. In further support of their proposals, petitioners claim that the proposed Class A channel substitutions will enable Station WEIZ at Hogansville and Station WTGA at Thomaston to operate as 6 kilowatt facilities. Specifically, petitioners maintain that Station WEIZ, Hogansville, Georgia, will be able to serve 65,589 persons in 2,497.8 square kilometers, an increase of 9,113 persons and 670.6 square kilometers over its present facility. Station WTGA, Thomaston, Georgia, will be able to serve 20,376 persons in 2,275.3 square kilometers, which represents an increase of 7,108 persons in 612 kilometers over its present facility.

6. **COMMENTS**. Petitioners and Wood filed a counterproposal requesting the substitution of Channel 251C3 for Channel 248A at Hogansville, Georgia, Stations WEIZ(FM), which eliminates the conflict between Orchon's proposal to substitute Channel 239C3 for Channel 239A at Greenville, Georgia, and the petitioners' proposal. Wood proposes to change the reference coordinates for Channel 239C3 at Greenville to 33-01-11 and 84-46-06, noting that the coordinates initially requested and proposed in the *Notice* (33-01-39 and 84-51-39) conflict with its proposal to upgrade Station WEIZ(FM) at Hogansville.

7. Petitioners and Orchon claim that adoption of their proposals will serve the Commission's allotment priorities and policies.[7] They state that the reallotment of Channel 249C3 from Sparta to Eatonton will provide a first full-time local transmission service and a first competitive daytime service to Eatonton, thereby fulfilling priority four of the FM allotment priorities. The reallotment of Channel 248C3 from Griffin (population 21,347) to Fayetteville (population 5,827) will provide a first local transmission service to Fayetteville, which will fulfill priority three of the FM allotment criteria, while eliminating two currently authorized grandfathered short-spacings. Four stations will be able to upgrade from Class A to Class C3, while also allowing Station WASZ(FM) at Ashland, Alabama, and Station WTGA(FM) at Thomaston, Georgia to improve their service. In addition, Station WUAF(FM) at Valley, Alabama, will be able to improve its service at the current transmitter site.

8. Petitioners and Orchon claim that these proposals will provide a new service to approximately 965,183 persons. Petitioners state that after the substitution of Channel 248C3 for Channel 249A at Griffin and the reallotment of Channel 248C3 from Griffin to Fayetteville, Station WQUL(FM) will continue to provide 60 dBu reception service to Griffin, and will provide reception service to an additional 55,466 persons. They also state that after the substitution of Channel 249C3 for Channel 249A at Sparta and the reallotment of Channel 249C3 from Sparta to Eatonton, Station WSKS(FM) will continue to provide 60 dBu reception service to Sparta, and will provide reception service to an additional 744,796 persons. In addition, they claim that the substitution of Channel 251C3 for Channel 248A at Hogansville will provide reception service to an additional 51,932 persons. The substitution of Channel 238A for Channel 237A will allow Station WASZ(FM) to operate as a 6 kilowatt facility, provide reception service to an additional 7,108 persons at its current transmitter site, and eliminate a grandfathered short-spacing with Station WSRM(FM), Coosa, Georgia. Additionally, they state that the substitution of Channel 266A for Channel 237A at Thomaston will allow Station WTGA to operate as a 6 kilowatt facility, and provide reception service to an additional 9,907 persons. Finally, they allege that the substitution of Channel 237A for Channel 251A at Valley, Alabama will allow Station WAUF to operate as a 6 kilowatt facility, provide reception service to an additional 10,189 persons at its presently authorized transmitter site, and eliminate a grandfathered short-spacing with Station WAGH(FM), Fort Mitchell, Alabama. Petitioners and Orchon also state that the adoption of these proposals would eliminate the need for the Commission to resolve a previous proceeding in MM Docket No. 90-309.[8]

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[5] Population figures are taken from the 1990 U.S. Census, unless otherwise stated.

[6] Station WKVQ(AM), a daytime-only station, is licensed to Eatonton.

[7] The FM priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

[8] MM Docket No. 90-309 was initiated to substitute Channel 248C3 for Channel 249A at Griffin, Georgia, to substitute Channel 288A for Channel 248A at Hogansville, Georgia, and to substitute Channel 249C3 for Channel 249A at Sparta, Georgia. However, a counterproposal to allot Channel 288A to Bowdon, Georgia, was adopted, and the upgrade at Griffin and Sparta were denied. *See* 6 FCC Rcd 4863 (1991), *recon. pend.*

9. Orchon has stated its intention to reimburse Pearce for reasonable expenses in changing its frequency at Valley, Alabama. Pearce filed reply comments including a copy of the agreement in which it consented to change its frequency and Orchon agreed to reimburse Pearce for expenses incurred with the channel change. Petitioners have stated their intentions to reimburse the licensee of Station WASZ(FM) at Ashland, Alabama, for the reasonable costs incurred with its channel change, and they also state their intentions to reimburse the licensee of Station WTGA(FM) at Thomaston, Georgia, for the reasonable costs incurred for relocating its transmitter site.

10. **DISCUSSION.** We will adopt the proposals set forth by petitioners, Orchon and Wood. We believe the substitution of Channel 249C3 for Channel 249A at Sparta, the reallotment of Channel 249C3 from Sparta to Eatonton, Georgia, and the modification of Station WSKS(FM)'s license to reflect the changes is in the public interest. The reallotment will not remove the sole local transmission service from Sparta, as Station WHAN(FM) will remain in the community. Eatonton, which is not in an Urbanized Area, will receive its first full-time station. Our engineering analysis indicates that the reallotment will enable Station WSKS(FM) to upgrade its station and provide reception service to an additional 52,465 persons, including 2,514 persons who will receive a fifth full-time reception service and 389 persons who will receive a fourth full-time reception service. We recognize that the removal of Station WSKS(FM) from Sparta will create a reception service loss area of 4,720 persons who will continue to receive at least five full-time aural reception services, and several small areas of population where some 534 persons will receive four full-time aural reception service reception services. While we carefully consider any proposal that would result in a loss of existing reception service, we believe the public interest is well served by this reallotment proposal, given the large reception service gains, and the relatively small reception service losses that would result, as well as the fact that this proposal permits a number of other service improvements as well.

11. Similarly, we believe that the substitution of Channel 248C3 for Channel 249A at Griffin, Georgia, the reallotment of Channel 248C3 from Griffin to Fayetteville, Georgia, and the modification of Station WQUL(FM)'s license to reflect the changes is in the public interest for the following reasons. The reallotment will provide Fayetteville, which is not in an Urbanized Area, with its first local transmission service. The reallotment will not remove Griffin's only local transmission service, as Stations WHIE(AM) and WKEU(FM) will remain in the community. Our engineering analysis indicates that Station WQUL(FM) will be able to upgrade its station and provide reception service to an additional 725,958 persons, including 224 persons who currently receive four full-time reception services. The removal of Station WQUL(FM) will create a reception service loss area of 15,827 persons, all of whom will continue to receive at least five full-time aural reception services. We believe the public interest is served by the proposal, since it will provide a first local service to Fayetteville and will provide additional reception service to over 700,000 persons.

12. We also believe the public interest would be served by substituting Channel 251C3 for Channel 248A at Hogansville, Georgia, and by modifying Station WEIZ(FM)'s construction permit to specify Channel 251C3, in order to provide that community with a wide coverage area FM service. This proposal requires channel substitutions at Thomaston, Georgia, and Ashland, Alabama. We will also substitute Channel 239C3 for Channel 239A at Greenville, Georgia, and modify the construction permit of Station WEJG(FM) to specify the higher class channel since it would provide the community with a wide coverage area service. This proposal also requires a channel substitution at Valley, Alabama. As a result of these changes, the Thomaston, Ashland and Valley stations will be able to operate as 6 kilowatt facilities.

13. As stated in the *Notice*, Channel 249C3 can be reallotted to Eatonton with a site restriction of 8.6 kilometers (5.4 miles) northeast of the community,[9] in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia, and to avoid a short-spacing to a construction permit for Station WKXK(FM), Channel 250C3, Fort Valley, Georgia. Channel 248C3 can be reallotted to Fayetteville with a site restriction of 2.7 kilometers (1.7 miles) southwest,[10] in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia. Channel 239C3 can be allotted to Greenville with a site restriction of 5.2 kilometers (3.2 miles) west,[11] in order to avoid a short-spacing to Station WNGC(FM), Channel 238C, Athen, Georgia. Channel 251C3 can be allotted to Hogansville with a site restriction 16.0 kilometers (9.9 miles) west,[12] in order to avoid a short-spacing to a construction permit for Station WVOK(FM), Channel 250A, Oxford, Alabama, to Station WAGH(FM), Channel 252A, Fort Mitchell, Alabama, and Station WSB(FM), Channel 253C, Atlanta, Georgia. Channel 266A can be allotted to Thomaston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.7 kilometers (3.5 miles) west,[13] in order to avoid a short-spacing to Station WPGA(FM), Channel 265A, Perry, Georgia, and Station WCJM(FM), Channel 265A, West Point, Georgia. Channel 238A can be allotted to Ashland, Alabama, in compliance with the Commission's minimum distance separation requirements at its currently licensed transmitter site.[14] Channel 237A can be allotted to Valley, Alabama, in compliance with the Commission's minimum distance separation requirements at its construction permit site.[15]

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[9] The coordinates for Channel 249C3 at Eatonton are North Latitude 33-23-03 and West Longitude 83-19-22.

[10] The coordinates for Channel 248C3 at Fayetteville are North Latitude 33-25-42 and West Longitude 84-28-22. We note the possibility of interference to the FCC Monitoring Station at Powder Springs, Georgia. Therefore, the licensee of Station WQUL(FM) will be required to provide protection to the monitoring station.

[11] The coordinates for Channel 239C3 at Greenville are North Latitude 33-01-11 and West Longitude 84-46-06.

[12] The coordinates for Channel 251C3 at Hogansville are North Latitude 33-09-56 and West Longitude 85-05-11.

[13] The coordinates for Channel 266A at Thomaston are North Latitude 32-54-08 and West Longitude 84-23-13.

[14] The coordinates for Channel 238A at Ashland are North Latitude 33-18-30 and West Longitude 85-50-58.

[15] The coordinates for Channel 237A at Valley are North Latitude 32-55-12 and West Longitude 85-13-04.

14. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we are modifying herein the license of Station WSKS(FM) to specify operation on Channel 249C3 at Eatonton, Georgia in lieu of Channel 249A at Sparta, Georgia, and the license of Station WQUL(FM) to specify operation on Channel 248C3 at Fayetteville, Georgia, in lieu of Channel 249A at Griffin, Georgia. In accordance with Section 1.420(g) of the Commission's Rules, we will also modify the construction permit for Station WEJG(FM) to specify Channel 239C3 in lieu of Channel 239A at Greenville, Georgia, and modify the construction permit for Station WEIZ(FM) to specify Channel 251C3 in lieu of Channel 248A at Hogansville, Georgia. We will also modify the license for Station WASZ(FM) to specify operation on Channel 238A in lieu of Channel 237A at Ashland, Alabama; modify the construction permit for Station WAUF(FM) to specify Channel 237A in lieu of Channel 251A at Valley, Alabama, and modify the license for Station WTGA(FM) to specify operation on Channel 266A in lieu of Channel 237A at Thomaston, Georgia, in order to accommodate the changes in community of license and upgrades.

15. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio,* 8 FCC 2d 159 (1967). Orchon has stated its intention to reimburse the permittee at Valley, Alabama, for reasonable expenses in changing its frequency and Pearce, the permittee of the Valley station, has given its consent to Orchon. Petitioners have stated their intentions to reimburse the licensee of Station WASZ(FM) at Ashland, Alabama, for the reasonable costs incurred with its channel change, and they also state their intentions to reimburse the licensee of Station WTGA(FM) at Thomaston, Georgia, for the reasonable costs incurred for relocating its transmitter site.[16] Radio, licensee of Station WTGA(FM), has consented to the change in transmitter site. Perry, licensee of Station WASZ(FM), Ashland, did not object to the change in channel and is deemed to have consented to the proposal.

16. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 10, 1993,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Ashland, Alabama	238A
Valley, Alabama	237A
Eatonton, Georgia	249C3
Fayetteville, Georgia	248C3
Greenville, Georgia	239C3
Griffin, Georgia	--
Hogansville, Georgia	251C3
Sparta, Georgia	274A
Thomaston, Georgia	266A

17. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Good Medicine Radio Georgia, Inc., for Station WSKS(FM), IS MODIFIED, to specify operation on Channel 249C3 at Eatonton, Georgia, in lieu of Channel 249A at Sparta, Georgia, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order,* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

18. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Design Media, Inc. for Station WQUL(FM), IS MODIFIED, to specify operation on Channel 248C3 at Fayetteville, Georgia, in lieu of Channel 249A at Griffin, Georgia, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order,* the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

19. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit issued to Orchon Broadcasting

[16] We agree with the petitioners argument that since Station WEIZ(FM) at Hogansville and Station WEJG(FM) at Greenville will achieve desired upgrades they are not entitled to reimbursement.

Company for Station WEJG(FM), Greenville, Georgia, and the construction permit issued to T. Wood and Associates, Inc., for Station WEIZ(FM), Hogansville, Georgia, ARE MODIFIED, to specify operation on Channel 239C3 at Greenville, Georgia, and Channel 251C3 at Hogansville, Georgia, respectively, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

20. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Perry Communications, Inc., for Station WASZ(FM), Ashland, Alabama, the construction permit issued to Pearce Broadcasting Partnership for Station WAUF(FM), Valley, Alabama, and the license of Radio Georgia, Inc., for Station WTGA(FM), Thomaston, Georgia, ARE MODIFIED, to specify operation on Channels 238A, 237A and 266A in lieu of Channels 237A, 251A, and 237A, respectively, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the authorizations for Stations WASZ(FM), WAUF(FM) and WTGA(FM), except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

21. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Good Medicine Radio Georgia, Inc., licensee of Station WSKS(FM), and Design Media, Inc., licensee of Station WQUL(FM), are required to submit a rule making fee in addition to the fee required for the application to effect the change of community of license and upgrade. In addition, Orchon Broadcasting Company, permittee of Station WEJG(FM), and T. Wood and Associates, Inc., permittee of Station WEIZ(FM), are required to submit a rule making fee in addition to the fee required for the application to effect the upgrades.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

23. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-214

In the Matter of

Amendment of Section 73.202(b), RM-8287
Table of Allotments,
FM Broadcast Stations.
(Ocracoke, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 6, 1993; Released: July 22, 1993

Comment Date: September 17, 1993
Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ocracoke Broadcasters ("petitioner"), requesting the substitution of Channel 224C1 for Channel 225A at Ocracoke, North Carolina, and the modification of its construction permit for a new station on the Class A channel to specify operation on Channel 224C1. Petitioner states that it will apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 224C1 for Channel 225A at Ocracoke since it could provide the community with a wide coverage area FM facility. Channel 224C1 can be allotted to Ocracoke in compliance with the Commission's minimum distance separation requirements with a site restriction of 50 kilometers (31 miles) southwest to accommodate petitioner's desired transmitter site.[1] Although the Ocracoke proposal complies with Section 73.207(b) of the Commission's Rules, we question whether, at the petitioner's specified site, the requirements of Section 73.315 of the Commission's Rules could be met. In this regard, we note that, at the rule making stage, a C1 allotment is assumed to provide a 70 dBu service to the entire community of license where the transmitter is located no more than 50 kilometers (31 miles) from the community's furthest point. Although the site specified in the petition is at the outer limit for a Class C1 operation, petitioner has not made any showing that compliance with the city-grade coverage requirements can be achieved from the site specified in the petition. Therefore, petitioner is requested to provide such a showing in comments. As requested, we also propose to modify petitioner's construction permit to specify operation on Channel 224C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Ocracoke or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ocracoke, North Carolina	225	224C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 17, 1993,** and reply comments on or before **October 4, 1993,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
P.O. Box 2506
Pawleys Island, SC 29585
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

[1] The coordinates for Channel 224C1 at Ocracoke are North Latitude 34-51-15 and West Longitude 76-24-58.

which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELESPHERE INTERNATIONAL, INC.,
Complainant,

v. File No. E-88-75

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 1993; Released: July 23, 1993

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Telesphere International, Inc. (Telesphere or complainant)[1] has filed a complaint against American Telephone and Telegraph Company (AT&T or defendant), alleging violations by AT&T of Sections 201(b), 202(a) and 203(c) of the Communications Act (Act), 47 U.S.C. §§ 201(b), 202(a) and 203(c),[2] and the rules adopted in the Commission's *Second Computer Inquiry*,[3] in connection with AT&T's "1+" and "0+" telephone service offerings. Telesphere requests the Commission find AT&T's actions unlawful and order AT&T to cease and desist from such actions.[4]

2. During the period covered by the complaint, Telesphere competed with AT&T in providing "1+" and "0+" telephone services to the hospitality industry.[5] Telesphere's complaint challenges the lawfulness of AT&T's practices in marketing its 1+ and 0+ services to hotels on a number of grounds. Telesphere alleges that AT&T unlawfully provides rebates to its subscribers, unreasonably discriminates in the provision of its services by offering discounts to certain customers, and bundles customer premises equipment (CPE) with network services in violation of Sections 201(b), 202(a) and 203(c) of the Act and Section 64.702(e) of the Commission's rules.[6] Attached to its Brief in Support of Judgment, Telesphere submits ninety-nine exhibits, most of which were produced during the extensive discovery taken against AT&T, which Telesphere claims support its allegations. For the reasons discussed below, we deny in part and grant in part Telesphere's complaint.

II. BACKGROUND

3. In the *Second Computer Inquiry*, the Commission concluded that "regulation of CPE under Title II [was] no longer warranted" and that the provision of CPE, or customer premises equipment, was severable from common carrier communications services.[7] The Commission ordered all carrier-provided CPE detariffed, a policy that the Commission believed would increase competition and innovation in the equipment industry and result in a wider range of lower priced CPE.

4. In removing CPE from Title II regulation, the Commission reexamined the propriety of a common carrier bundling terminal equipment with transmission services and concluded that as a general proposition, the bundling of CPE and services could inhibit competition in the CPE market because it could serve to restrict the freedom of choice of consumers.[8] The Commission was also concerned that if carriers were allowed to bundle CPE with network services, some ratepayers might be forced to buy otherwise

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[1] At the time of the complaint, Telesphere provided interexchange common carrier services. Its principal office was in Oakbrook Terrace, Illinois. Telesphere has since filed for bankruptcy before the United States Bankruptcy Court of the Northern District of Illinois. Several of its assets have been acquired by other telecommunications entities.

[2] Section 201(b) requires "[a]ll charges, practices, classifications, and regulations for and in connection with each communication service, [to] be just and reasonable." 47 U.S.C. § 201(b).

Section 202(a) prohibits "any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services." 47 U.S.C. § 202(a).

Section 203(c) prohibits rebates by common carriers by not permitting them (1) to charge rates other than those specified in their tariffs, (2) to "refund or remit by any means or device any portion of the charges so specified," or (3) to "extend to any person any privileges or facilities, in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." 47 U.S.C. § 203(c).

[3] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (*Computer II*), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FCC*, 461 U.S. 938 (1983), *aff'd on second further reconsideration*, FCC 84-190 (released May 4, 1984).

[4] From July 1988 through June 1990, the parties engaged in extensive discovery including interrogatories, depositions, and production of documents. On June 15, 1990, pursuant to direction of the Bureau's Enforcement Division, Telesphere filed its "Brief in Support of Judgment" (Final Brief). AT&T filed its "Brief in Opposition to Complainant's Motion For Judgment and in Support of Judgment in Favor of Defendant" (Opposition Brief) and "Proposed Findings of Fact and Conclusions of Law" (Proposed Findings) on July 23, 1990, and Telesphere filed its "Reply Brief in Support of Judgment" (Reply Brief) on August 10, 1990. Appendix A contains a complete list of the pleadings filed by the parties.

[5] "1+" calls are sent-paid calls billed to the telephone from which they are placed. "0+" calls or non-sent paid calls include collect calls, calls billed to a third number, and calls billed to telephone calling cards.

[6] Complaint at 2.

[7] *Computer II*, 77 FCC 2d at 388, 446-47. For purposes of this proceeding, customer premises equipment, or CPE, includes equipment provided by a common carrier and located on the premises of a customer.

[8] *Computer II*, 77 FCC 2d at 442-43. However, the Commission also noted in *Computer II* that "[i]f the markets for the components of the commodity bundle are workably competitive, bun-

unwanted bundled CPE and thus find themselves subsidizing other ratepayers who elected to use the carrier-provided equipment.[9] The Commission also expressed concern that bundling equipment and services would produce distortions in interstate rates and thereby inhibit competition in the CPE market even further.[10]

5. To prevent such anticompetitive practices and to guard against improper cross-subsidization, the Commission adopted Section 64.702(e) of its Rules, which, in pertinent part, provides: "[e]xcept as otherwise ordered by the Commission . . ., carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis."[11] The Commission's goal was to create a vigorously competitive market, which would afford the public a wider range of choices at lower costs.[12]

III. DISCUSSION

A. Computer II: Bundling CPE and Network Services

Contentions of the Parties

6. Telesphere first alleges that AT&T has violated the *Computer II* prohibition against bundling unregulated CPE with network services. Telesphere asserts that AT&T calculates the amount of network business it expects from a particular customer for the express purpose of determining the level of discount on CPE it will offer that customer. Telesphere claims that this type of calculation demonstrates "a clear connection" between AT&T's provision of interexchange service and its provision of CPE, and, therefore, constitutes unlawful bundling by AT&T. To support its position, Telesphere cites to a variety of AT&T internal documents, letters to or from actual or prospective customers, and deposition testimony.[13] Some of the letters cited by Telesphere were addressed to AT&T by AT&T customers and contain a variety of vague references to a so-called "single vendor solution proposed by AT&T . . ." for network services and the need to tie services and/or CPE together and be "more price competitive."[14] Telesphere asserts that the so-called single vendor solution or "umbrella agreement" as contemplated by these letters and in internal AT&T documents, could only exist through the illegal bundling of network services and CPE.[15]

7. Telesphere also alleges that AT&T's practice is to promote its network services and CPE to hotels during the same sales presentation. Telesphere argues that by doing so, AT&T effectively bundles them. Some of the specific charges made by Telesphere include a claim that AT&T offered one hotel chain sizable discounts on certain CPE "in order to recapture or retain network services business."[16] Telesphere contends that AT&T employed a marketing approach in its dealings with another hotel chain, in which AT&T "sought to bundle CPE and network services into packages'" in a deliberate scheme to capture network services that were already being provided to the hotel chain by Telesphere.[17] Telesphere also claims that AT&T awarded special CPE discounts to certain large network customers, and tied the level of these discounts to the volume of AT&T network services purchased.[18] These bundling practices, Telesphere argues, violate the Commission's *Computer II* rules.

8. AT&T denies bundling the sale of tariffed network services with CPE to hotels and asserts that the marketing and pricing of its CPE has no relation to a customer's selection of AT&T's tariffed services. AT&T claims that the evidence Telesphere proffers is taken out of context primarily from internal AT&T communications that discussed authorization to offer hotels discounted CPE. Further, AT&T denies that there is any evidence showing that discounted CPE offers were conditioned on the hotel's use of tariffed services. AT&T asserts that it disregards as immaterial to the proposal any reference to network services on requests to offer discounted CPE. AT&T states that its CPE was sold at a price set according to market conditions, without regard to network service sales opportunities.[19]

Discussion

9. After reviewing the evidence and arguments presented by the parties, we are not persuaded that AT&T unlawfully bundled CPE and network services. Despite the substantial discovery undertaken by the parties, the record contains no conclusive evidence that AT&T conditioned its sale of CPE, at discounted prices or otherwise, to any of the hotels on the purchase of network services. Telesphere relies primarily on AT&T documents which it claims describe so-called "umbrella agreements" under which AT&T conditioned the availability of discounted CPE on the purchase of its network services. Our reading of these documents, however, reveals little more than general customer statements regarding the purchase of AT&T's CPE and network ser-

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dling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle. . . . [I]n many real-world, non-regulated, workably competitive markets, there exist sustainable markets for both bundled and unbundled commodities." *Id.* at 443, n.52; *see also, Competition in the Interexchange Marketplace*, 5 FCC Rcd 2627, 2648-49 & n.228 (1990) (*Interexchange Proceeding*).

[9] *Computer II*, 77 FCC 2d at 445.

[10] *Id.* at 443, 444, & n.52. The essential characteristic of "an illegal tying or bundling arrangement" lies in a seller's exploitation of its control over one product to force a buyer into the purchase of a different, distinct product that the buyer either did not want at all or might have preferred to purchase elsewhere. *Interexchange Proceeding*, 5 FCC Rcd at 2648 (quoting Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 12 (1984)). The tying product must be conditioned on the purchase of a tied product and the two products must be distinct. Fox Motors, Inc. v. Mazda Distributors, 806 F.2d 953, 957 (10th Cir. 1986). In other words, an invalid tying or bundling arrangement requires, *inter alia*, an agreement to condition the sale of a certain product where the seller has market power (the tying product) on the sale of a different, distinct, and more likely competitive, product (the tied product).

[11] 47 C.F.R. § 64.702(e); *see also AT&T Communications, Revision to Tariff F.C.C. Nos. 1 and 2*, 4 FCC Rcd 4984, 4985 (1989).

[12] *Computer II*, 77 FCC 2d at 439, 445.

[13] Final Brief at 12-48,

[14] *Id.* at 22, 25, & tabs 32 & 34; *see also* Reply Brief at 27.

[15] Final Brief at 24-25.

[16] *Id.* at 17-18.

[17] Reply Brief at 22.

[18] Final Brief at 27-33.

[19] Opposition Brief at 5-29.

vices. Based on the record before us, we cannot conclude that AT&T unlawfully bundled CPE and network services or otherwise violated the Commission's *Computer II* requirements. While a number of the letters indicate that certain customers perceived the combined purchase of AT&T's CPE and network services as advantageous, none constitute proof that AT&T marketed CPE and network services in single package deal as alleged by Telesphere.

B. Bundling 0+ Commissions With 1+ Service

Contentions of the Parties

10. Telesphere alleges that AT&T conditions the availability of commissions on 0+ service to hotels on the hotels' selection of AT&T as their primary carrier for 1+ service.[20] Telesphere asserts first that AT&T's commission arrangements are off-tariff deals that provide unlawful rebates to selected hotel customers and that such rebates are prohibited by Section 203(c) of the Act.[21] Second, Telesphere charges that AT&T's bundling of 0+ commissions with 1+ service is an unreasonable practice that violates Section 201(b) of the Act.[22] Telesphere asserts that AT&T's practice of promoting both 0+ and 1+ services at the same sales presentations and signing the contracts covering the two services with the same customer within days of each other shows that AT&T routinely bundled the two. Telesphere cites previous Commission rulings rejecting AT&T's attempts to bundle 0+ commissions with 1+ service and to condition discounted 800 service on subscribing to AT&T's software defined network as violating Section 201(b) of the Act. [23]

11. AT&T denies that it bundled 0+ commissions with 1+ service, claiming that Telesphere's assertions are based on inference and speculation. AT&T argues that the mere fact that offers to provide 1+ service and to pay 0+ commissions were discussed at a single meeting provides no proof that the availability of 0+ commissions was conditioned on the purchase of 1+ service from AT&T.[24] AT&T admits that it proposed a bundled 0+/1+ offer to one customer, but states that the tariff never became effective and the offer was withdrawn. AT&T states that ultimately, the customer selected a revised offer for tariffed 1+ service, independent of 0+ commissions.[25]

Discussion

12. Initially, we note that a rebate, by definition, is normally paid by a carrier to an end user customer of the carrier's tariffed service. Although the traffic aggregator is the subscriber for the 0+ service from its premises, it is not the customer for purposes of a rebate analysis, because it is not the party that makes the 0+ call and pays the tariffed rates.[26] In the instant case, it is clear that while AT&T pays commissions based on the volume of "0+" traffic to traffic aggregators such as hotels, AT&T's 0+ customers pay the full tariffed rate for AT&T's interstate long distance services. Under these circumstances, as the Bureau made clear in its *Private Payphone Order*, there is no unlawful rebate.[27]

13. Telesphere relies primarily on the *Private Payphone Order* and on the *800/SDN Order* to support its claims that AT&T bundled its 0+ and 1+ services in violation of Section 201(b) of the Act. In the *Private Payphone Order*, the Bureau found that the tie-in between 1+ and 0+ services was an express part of AT&T's service proposal. The Bureau found that AT&T was using its substantial market power in the 0+ market to induce private payphone companies (PPCs) to purchase 1+ service, and in doing so, was effectively foreclosing competition for the PPC's 1+ service through the PPC's unrelated choice as to a 0+ provider. The Bureau rejected the proposal as an unreasonable practice under Section 201(b) of the Act.[28] Similarly, in the *800/SDN Order*, the Bureau found that AT&T's attempt to condition an 800 service discount on the customer's purchase of AT&T's software defined network (SDN) service was a clear part of the proposed tariff revision. The Bureau held that because AT&T's aim was to leverage its significant advantage in the 800 market to gain a competitive advantage in the SDN market, AT&T's proposal was anticompetitive and, therefore, an unreasonable practice under Section 201(b).[29]

14. In both the *Private Payphone Order* and the *800/SDN Order*, there was sufficient evidence in the record showing the tie-in between the two respective services. Here too, we find evidence of an unlawful tie-in between AT&T's 0+ and 1+ services within the meaning of Section 201(b) of the Act. Specifically, several of the 0+ commission agreements executed by AT&T in 1988 include provisions committing AT&T to offer hotels 0+ commissions on calls from LEC public telephones installed at hotel locations, should the hotel, at a future date, select AT&T as the primary carrier for those LEC-owned telephones.[30] We are not persuaded by AT&T's claim that these offerings and similar offerings in other service proposals did not and were never intended to condition the availability of 0+ commissions on a customer's purchase of AT&T's 1+ services.[31] In the *Private Payphone Order*, issued by the Bureau in October 1988, we concluded that AT&T possessed substantial market power in the 0+ market at that time.

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[20] Final Brief at 55-56.

[21] *Id.* at 56 n.19.4

[22] *Id.* at 57-58. Telesphere also asserts, without supporting evidence or arguments, that AT&T's commission payment practices constitute unlawful discrimination under Section 202(a) of the Act because they favor select hotels over other AT&T customers. *Id.* at 56 n.19. These Section 202(a) claims are unavailing for the simple reason that commission payments are not considered common carrier services and, therefore, are not covered by Section 202(a)."

[23] *Id.* at 31-33, 57-58 (citing *AT&T's Private Payphone Commission Plan*, 3 FCC Rcd 5834, 5837 (Com. Car. Bur. 1988) (*Private Payphone Order*)); *AT&T Communications, Revisions to Tariff F.C.C. No 1 & 2*, 5 FCC Rcd 3833 (Com. Car. Bur. 1990) (*800/SDN Order*).

[24] Opposition Brief at 30-33.

[25] *Id.* at 33-34.

[26] *Private Payphone Reconsideration*, 7 FCC Rcd at 7135-36; *see also Revisions to AT&T Communications Tariff F.C.C. No. 1*, Hospitality Network Service, Transmittal No. 1046, 3 FCC Rcd 975, 976 (*HNS Suspension Order*), 3 FCC Rcd 1465 (*HNS Investigation Order*), 3 FCC Rcd 3961 (*HNS Termination Order*), 3 FCC Rcd 4169 (Com. Car. Bur. 1988) (*Revised HNS Order*).

[27] *Private Payphone Order*, 3 FCC Rcd at 5836.

[28] *Private Payphone Order*, 3 FCC Rcd at 5836-37.

[29] *800/SDN Order*, 5 FCC Rcd at 3834-35.

[30] *See* Final Brief at 59 & tab 95.

[31] Opposition Brief, tab 22.

Similar to our findings in that order, we conclude that AT&T's 1988 0+ commission agreements, coupled with AT&T's admitted practice of jointly promoting 0+ and 1+ services, establish that AT&T was leveraging its substantial market power in the 0+ market to induce hotels to purchase AT&T's 1+ services. For the reasons stated in the *Private Payphone Order*, we find this was an unreasonable practice under Section 201(b) of the Act. We note, however, that the particular provisions were modified by AT&T in 1988 following a federal district court order requiring 0+ equal access for LEC payphones,[32] and in March 1989, the practice was stopped altogether.[33] To the extent that Telesphere seeks relief in the form of an order requiring AT&T to cease and desist such behavior, AT&T has done so and no further action by this agency is required.

C. Leveraging Hotel Room Business to Obtain Network Services Business

Contentions of the Parties

15. Telesphere claims that AT&T used its considerable ability to purchase hotel rooms and hospitality services to coerce hotels into selecting AT&T's 1+ and 0+ services. Telesphere argues that the "reciprocal buying" arrangements that AT&T entered into with various hotels provided powerful incentives because they reduce a hotel's cost of using AT&T's network services and thus function as rebates in violation of Section 203(c) of the Act. As an example of AT&T's alleged reciprocal buying practice, Telesphere points to an agreement between AT&T and a hotel. Pursuant to this agreement, AT&T contracted to hold a series of 34 seminars at the hotel,[34] while the hotel agreed to install AT&T telephones next to the seminar classroom for use by seminar participants.[35] Telesphere states that, "[a]pparently, these telephones would route all 0+ calls to AT&T."[36]

16. In responsive pleadings, AT&T states that it does not use its room business to leverage its network services business, and denies any reciprocal buying arrangements with hotels, particularly as a reward for the hotel's use of AT&T's network services. According to AT&T, it does maintain a list of preferred hotels for the nonobligatory use of its employees.[37] AT&T maintains, however, that AT&T employees are not restricted to the accommodations recommended by this list. AT&T states that to be on the list, individual hotels must meet certain criteria that are related only to the travel requirements of the employees and have nothing to do with whether a particular hotel uses AT&T services. AT&T also states that employee requests that certain hotels be included on the preferred list are routinely turned down if the hotel fails to meet the criteria, regardless of the reason for the request.[38] Therefore, says AT&T, the charge that AT&T provides rebates on its tariffed services through reciprocal buying of rooms is false.[39]

Discussion

17. We find no support in the record for Telesphere's claim that AT&T used its ability to purchase hospitality services to coerce hotels into purchasing its network services. We have reviewed the agreement cited by Telesphere and conclude that it does not reflect the type of reciprocal arrangement Telesphere has alleged. There is nothing in the agreement that would even suggest that the hotel in question was required to change its primary interexchange carrier at all, let alone purchase AT&T network services in return for seminar business. We note that the agreement specifically provides that AT&T will train the hotel operators how to comply with requests by hotel guests for access to an AT&T operator, implying no change in the services provided by other carriers to the hotel. In fact, the record shows that this particular hotel apparently continued using a non-AT&T carrier for its undesignated 0+ and other traffic. Finally, Telesphere has presented no evidence to rebut AT&T's explanation that the hotel's agreement to place AT&T telephones at seminar locations was entered for the express purpose of facilitating the ability of AT&T's seminar participants to access an AT&T operator. Nor has Telesphere presented evidence that demonstrates that AT&T conditioned its use of the hotel's seminar facilities on the hotel's purchase of AT&T's network services.[40]

18. Telesphere's reliance on several court decisions to support its claims of improper rebates by AT&T are equally unavailing. Each of those decisions involved an undisputed reciprocal arrangement between two parties whose terms were questioned by the court.[41] However, in the instant complaint, Telesphere has failed to show that such reciprocal arrangements exist, much less that they violate Section 203(c) of the Act.

19. Finally, there is simply no support in the record for Telesphere's claim that AT&T has used coercive tactics to solicit business by directing its employees to complain to hotels that use a primary carrier other than AT&T. Complaints such as those Telesphere describes, *e.g.*, of being unable to reach one's carrier of choice and of being charged a rate much higher than expected, are similar to complaints about OSP practices that the Commission receives. Further, nothing in the record suggests that even if AT&T had directed employees travelling for official AT&T business to use AT&T exclusively to make long distance calls, the direction was anything other than a legitimate business decision. Thus, we do not find that AT&T has violated Section 203 through the selection or purchase of hotel accommodations by its sales force.

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[32] *United States v. W. Elec. Co., Inc.*, 698 F. Supp. 348 (D.D.C. 1988).

[33] Opposition Brief, tab 22.

[34] A second example of AT&T's reciprocal buying practices cited by Telesphere also involved an AT&T/hotel agreement, pursuant to which the hotel was required to switch its phones to AT&T for operator services during an AT&T conference held at the hotel. Final Brief at 51.

[35] Final Brief, tab 81.

[36] *Id.* at 51.

[37] Opposition Brief at 37.

[38] *See, e.g.*, Final Brief at 30-31, tabs 44, 45, 47; Opposition Brief at 38-39, tab 17.

[39] Opposition Brief at 35-39.

[40] *Id.* at 39, tab 25.

[41] *Id.* at 49-50.

D. Anticompetitive Marketing Practices

Contentions

20. Telesphere claims, without any elaboration or references to specific abuses, that AT&T could take unfair competitive advantage of its access to customer proprietary network information to benefit its network services business and that such action would be anticompetitive and unreasonable under Section 201(b) of the Act. Telesphere asserts that the same anticompetitive concerns about the misuse of CPE customer information that the Commission expressed in 1985.[42] continue to exist today. Telesphere maintains that AT&T's use of what Telesphere describes as the "CPE bottleneck" is an abuse of the monopoly power that *Computer II* is intended to control.[43]

21. Finally, Telesphere asserts that AT&T and various hotel chains have colluded to foreclose competition in the provision of network services. Telesphere points to letters from executives of various hotel chains which it claims advise franchisees or general managers of the chain that the respective parent corporation uses AT&T and urges or requires the individual hotels to do so as well.[44]

Discussion

22. In the absence of any specific allegations of misconduct, we find no merit in Telesphere's claims that AT&T has taken unfair advantage of access to CPNI. When the Commission determined that AT&T would be permitted to sell CPE and network services through a single point of contact, it expressed a view that the problem of AT&T's "unequal access to customer proprietary information may not be as significant" as many commenters suggested.[45] Specifically, the Commission noted that the most valuable customers, "large corporations with complex telecommunications systems" such as the hotel chains referred to by Telesphere, would likely be sophisticated telecommunications users and that early contact by AT&T's network services marketers would not necessarily result in an immediate sale to AT&T. Rather, the Commission noted that such contact is likely to result in customer-initiated contacts with other network services providers for competitive bids.[46] The Commission concluded, therefore, that any customer information gained from AT&T's network services business would likely be information that competitors have as well. Telesphere has not alleged any facts or presented any arguments that would show that AT&T has abused its access to CPNI in a manner that precluded or hindered competition by other carriers. In the absence of such showing, we reject Telesphere's claims.

23. Nor does the record before us support Telesphere's claim that AT&T prevented other carriers from having a reasonable opportunity to compete against AT&T for the provision of network services. The evidence submitted by Telesphere consists solely of correspondence to AT&T from particular hotels indicating what the hotel chain's headquarters has done or intends to do vis-a-vis the purchase of network services. The record is devoid of any evidence that would even suggest anticompetitive collusion between AT&T and any hotel chains. In the absence of any probative evidence to show that AT&T entered into agreements or made arrangements with hotel chains to prevent or restrict other network service providers from marketing their services, we find no merit in Telesphere's claims.

E. Outstanding Motions

Telesphere's Motion to Amend the Protective Agreement

24. On May 9, 1990, Telesphere filed a motion requesting that we amend the Protective Agreement which the parties intended to protect the confidentiality of certain documents during discovery. Telesphere proposed to submit several documents produced by AT&T pursuant to the protective agreement with its comments filed in a separate Commission rulemaking. That proceeding has since terminated[47] and accordingly, Telesphere's motion is moot.

IV. CONCLUSION

25. In this Order, we have analyzed Telesphere's allegations that AT&T acted unlawfully by bundling CPE with network services, bundling 0+ commissions with 1+ service, providing rebates to customers, and otherwise engaging in anticompetitive behavior. In so doing, we have carefully reviewed the voluminous record developed by the parties, including their numerous pleadings and associated exhibits and attachments. For the reasons discussed above, we deny in part and grant in part Telesphere's complaint. We also dismiss as moot Telesphere's request to amend the protective agreement entered into by the parties to this proceeding.[48]

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 208 of the Communications Act, 47 U.S.C. §§ 154(i), 208, and authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Complaint filed by Telesphere IS DENIED IN PART and GRANTED IN PART.

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[42] Final Brief at 62 (citing *Furnishing of Customer Premises Equipment and Enhanced Services by American Tel. & Tel. Co.*, 102 FCC 2d 655, 693 (1985) (*CPNI Order*)).

[43] *Id.* at 62-64.

[44] *Id.* at 60-62.

[45] *CPNI Order*, 102 FCC 2d at 692-93.

[46] *Id.*

[47] *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880 (1991).

[48] In the interest of a full and complete record, we grant AT&T's Motion to File Consolidated Opposition and its Motion for Leave to File Late Pleading, filed on March 1, 1989 and March 30, 1989, respectively. We also grant Telesphere's Motion to Withdraw Affidavit, filed on June 23, 1989. All other pending motions identified in Appendix A to this Memorandum Opinion and Order are dismissed as moot.

27. IT IS FURTHER ORDERED, that the Motion to Amend Protective Agreement filed May 8, 1990 by Telesphere, and the motions identified in note 51 ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

LIST OF PLEADINGS

Date Filed	Pleading Title	Party
6/1/88	Complaint	Telesphere
7/11/88	Answer to Complaint	AT&T
7/11/88	First Set of Interrogatories to Telesphere	AT&T
7/25/88	Reply to Answer	Telesphere
7/25/88	First Set of Interrogatories to AT&T	Telesphere
8/10/88	Response to AT&T's First Set of Interrogatories	Telesphere
8/24/88	Response to Telesphere's First Interrogatories	AT&T
8/30/88	Motion to Compel Response	AT&T
9/6/88	Opposition to Motion to Compel Response	Telesphere
9/7/88	Motion to Compel Response	Telesphere
9/16/88	Reply to Opposition to Motion to Compel	AT&T
9/21/88	Opposition to Motion to Compel	AT&T
9/27/88	Reply to Opposition & Proposed Order	Telesphere
10/20/88	Motion for Discovery & Proposed Order	Telesphere
11/1/88	Opposition to Motion for Discovery	AT&T
12/7/88	Motion for Expedited Order re: Discovery	Telesphere
12/19/99	Opposition to Motion to Expedite	AT&T
12/27/88	Reply to Opposition to Motion to Expedite	Telesphere
2/6/89	Motion for Summary Judgment	Telesphere
2/14/89	Supplement to Motion for Summary Judgment	Telesphere
3/1/89	Motion to File Consolidated Opposition	AT&T
3/1/89	Opposition to Motion for Summary Judgment	AT&T
3/8/89	Reply Memo to Support Summary Judgment	Telesphere
6/23/89	Motion to Withdraw Affidavit	Telesphere
8/31/89	Motion for Further Discovery, Costs, & Attorneys' Fees	Telesphere
9/13/89	Opposition to Motion for Further Discovery, etc.	AT&T
9/20/89	Reply to Opposition to Motion	Telesphere
3/30/90	Motion for Leave to File Late Pleading	AT&T
4/5/90	Opposition to Motion for Sanctions	AT&T
4/9/90	Reply to Opposition to Motion for Sanctions	Telesphere
5/9/90	Motion to Amend Protective Agreement	Telesphere
7/13/90	Opposition to Motion to Amend Protective Agreement	AT&T
7/20/90	Reply to Opposition to Motion to Amend	Telesphere
6/15/90	Brief in Support of Judgment	Telesphere
7/23/90	Brief in Opposition to Complainant's Motion	AT&T
7/23/90	Proposed Findings of Fact and Conclusions of Law	AT&T
8/10/90	Reply Brief in Support of Judgment	Telesphere
11/16/90	Motion for Final Order	Telesphere
11/29/90	Response to Motion for Final Order	AT&T

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of San Mateo	CSR-3773
County Community College	CA0901
District against	
Post-Newsweek Cable of	
California, Inc.	

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993; Released: July 23, 1993

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial educational stations. On January 26, 1993, San Mateo Community College District, licensee of Station KCSM-TV (Educ., Channel 60), San Mateo, California, filed a petition with the Commission stating that its carriage request had been refused by the cable television system serving Union City, California, Post-Newsweek Cable of California, Inc. d/b/a Pacific Cable Television, even though the Grade B contour of KCSM-TV covers the cable system's principal headend at Union City, according to the station.

2. On March 2, 1993, an opposition to the above petition was filed with the Commission on behalf of Pacific Cable Television, which noted the outstanding *Standstill Order* and the pending litigation involving the constitutionality of the 1992 Cable Act in *Turner Broadcasting System, Inc. et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992). The opposition also stated that Pacific Cable Television had not received KCSM-TV's carriage request of November 25, 1992, and that Pacific Cable Television had no record of issuing a letter dated December 1, 1992, wherein it purportedly refused to grant the requested carriage. Furthermore, it noted that KCSM-TV had not yet shown that it was entitled to the carriage requested since the form it submitted from the Corporation for Public Broadcasting for a Fiscal Year 1993 Community Service Grant was unsigned.[1]

3. On April 2, 1993, KCSM-TV filed a response to the above opposition claiming that on February 2, 1993, it had faxed a copy of its carriage request of November 25, 1992, to Susan Adams, who was listed as the General Manager of Pacific Cable Television's system in Union City. According to KCSM-TV it received no response to this request; however, its initial allegation that Pacific Cable Television had refused its request for carriage was erroneous because KCSM-TV's staff had originally confused Pacific Cable Television with another operator. In addition, KCSM-TV submitted a copy of its Noncommercial Educational Television Broadcast Station License from the Commission and noted that the station has yet to receive a response to these carriage requests either from Susan Adams or from any other officer of Pacific Cable Television.

4. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation concerning *Turner Broadcasting System, Inc., supra*, which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and which terminated the *Standstill Order* previously issued in this matter. In the instant case, it is clear that KCSM-TV is a qualified local NCE station entitled to carriage on the Pacific Cable Television system. It also appears that KCSM-TV has requested carriage on the system; as an NCE station, it need not receive a response from the system before filing a must-carry complaint with the Commission. *See* §76.61(b) of the Commission's Rules.

5. Accordingly, since no further pleadings were filed in this proceeding within the fifteen (15) day period specified by the Commission in its Public Notice, Mimeo No. 32419 (released March 26, 1993), the petition filed January 26, 1993, on behalf of Station KCSM-TV IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Post-Newsweek Cable of California, Inc. d/b/a Pacific Cable Television IS ORDERED to commence carriage of KCSM-TV forty-six (46) days from the release date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[1] However, we take note of the fact that the records of the Corporation for Public Broadcasting reveal that KCSM-TV has been awarded such a grant, and that the station's form was duly signed by Craig T. Blake, Associate Chancellor, on September 3, 1992, and by Richard Zanardi, General Manager, on September 30, 1992.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Channel 5 Public Broadcasting, Inc., against WestStar Cable	CSR-3799-M CA0730

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993 **Released: July 23, 1993**

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial educational stations. On April 2, 1993, Channel 5 Public Broadcasting, Inc., licensee of Television Broadcast Station KNPB (Educ., Channel 5), Reno, Nevada, filed a complaint with the Commission requesting carriage by WestStar Cable, operator of a cable system serving Truckee, California. According to KNPB, its Grade B contour encompasses the principal headend of WestStar Cable at Truckee, and this community is also within fifty miles of Reno. Therefore, KNPB states that it is entitled to carriage by WestStar Cable, pursuant to §5 of the 1992 Cable Act.

2. On April 26, 1993, WestStar Communications I ("WestStar") filed an "Opposition" to KNPB's request stating that it is willing to carry the station once KNPB delivers, pursuant to §5(g)(4) of the 1992 Cable Act, a consistent and satisfactory quality signal to the cable system's principal headend, which WestStar states is actually on top of Ward Peak at Alpine Meadows. According to WestStar, KNPB has been aware of this problem for at least a year and previously sent one of its engineers to Ward Peak to monitor the signal. Furthermore, on April 14, 1993, at 2:00 pm P.D.T., Stan Mendes, WestStar's Chief Technician, found that KNPB's signal strength was less than -64 dBm at the Ward Peak headend. At the same time, Mr. Mendes also measured the signal strength of a translator at -55 dBm on Channel 54, which rebroadcasts KNPB from Peavine Mountain. WestStar notes that these results are below the standards set in the 1992 Cable Act for commercial UHF and VHF signals, and concludes that KNPB's petition must, therefore, be denied.

3. Section 615(g)(4) of the Communications Act of 1934, as amended, states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission." 47 U.S.C. 535(g)(4). Because the cable operator is in the best position to know whether a given NCE station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it has used good engineering practices, as defined below, to measure the signal delivered to the headend.

4. With respect to the standard to be used to determine what constitutes a "good quality" signal, we note that the 1992 Cable Act failed to set a standard for either VHF or UHF non-commercial stations. However, the 1992 Cable Act did adopt a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. To establish the availability of a VHF commercial station's signal, the 1992 Cable Act set out a standard of -49 dBm at a cable system's headend. A standard of -45 dBm was established for UHF commercial station signals. Consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine, absent other evidence, whether VHF or UHF non-commercial stations place adequate signal levels over a cable system's principal headend.

5. In this instance, WestStar determined KNPB's signal strength to be below the requisite level for a VHF commercial station. We find, however, that the cable system failed to follow generally acceptable engineering practices in making its determination. To determine whether a certain level of signal is present, it is necessary to submit a series of measurements, not just one, as WestStar did. Generally, if the test results are less than -55 dBm for a VHF station, we believe that at least four readings must be taken over a two hour period. Where the initial readings are between -55 dBm and -49 dBm, inclusive, we believe that the readings should be taken over a 24 hour period, with measurements no more than 4 hours apart to establish reliable test results.[1] In addition to the information required by our rules to be furnished to the affected station when there is a dispute over signal level measurements,[2] cable operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys[3] should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when the tests were done. When measured against these criteria, we conclude that the test submitted by WestStar is insufficient to demonstrate that KNPB's signal is not of "good quality" at the cable system's headend.

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[1] For UHF-TV stations, if the test results are less than -51 dBm, we believe that at least four readings must be taken over a two hour period. Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.

[2] *See* Section 76.61 of the Commission's Rules.

[3] Field strength measurements for the determination of Grade B contours shall follow the procedures set forth in §73.686 of the Commission's Rules.

6. Accordingly, the petition filed April 2, 1993, by Channel 5 Public Broadcasting, Inc., licensee of Station KNPB IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and WestStar Communications I IS ORDERED to commence carriage of Station KNPB forty-six (46) days from the release date of this *Order* unless WestStar submits the engineering data required herein to support its assertion of poor signal quality from KNPB at WestStar's principal headend. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Independence Public Media of Philadelphia, Inc. against Wade Cablevision	CSR-3809-M PA2894

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993; Released: July 23, 1993

By the Chief, Mass Media Bureau:

1. On March 8, 1993,[1] a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Wade Cablevision ("Wade"), had declined to carry the station, even though Philadelphia, WYBE's city of license, is also the location of the system's principal headend and therefore WYBE, which is within 50 miles, is a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. On April 13, 1993, Wade filed an "Opposition" to this petition, in which it argues that even assuming WYBE is a qualified NCE station, its system, which has more than 36 usable activated channels, is currently carrying the following three other qualified NCE stations pursuant to the provisions of Section 76.56(a)(iii) of the Commission's Rules: WHYY-TV (Educ., Channel 12), Wilmington, Delaware; WNJS (Educ., Channel 23), Camden, New Jersey; and WLVT-TV (Educ., Channel 39), Allentown, Pennsylvania. It concludes, therefore, that since it is already meeting its carriage obligations, it is not required to carry Station WYBE.

3. In its reply to the opposition, filed April 23, 1993, WYBE states that although there is a discrepancy between Section 76.56(a)(iii) of the Commission's Rules and paragraph 11 of the *Report & Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993), it believes that Subsections (b)(3)(D) and (e) of §615 of the Cable Act support its contention that Wade is required to carry any local NCE station that requests carriage absent those stations that substantially duplicate a currently-carried station. Since Wade does not argue that WYBE duplicates existing programming, petitioner contends that Wade is required to carry its signal.

4. We agree with WYBE's argument. Wade cites Section 76.56(a)(iii) of the Commission's Rules[2] as its basis for not having to carry Station WYBE. However, Wade's reliance on the reading of this rule is in error. Section 76.56(a)(iii) requires that all cable systems with more than 36 channels must carry a *minimum* of three NCE channels, but it does not preclude requiring such a system to carry additional NCE channels. Indeed, paragraph 11 of the *Report & Order in MM Docket No. 92-259, supra*, specifically states: "[s]ystems with a capacity of more than 36 usable activated channels are *generally required* to carry the signals of *all* qualified local NCE stations requesting carriage" (emphasis supplied). The only exception to this requirement is when there is substantial programming duplication between local NCE stations.

5. In light of the foregoing, therefore, the complaint filed March 8, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Wade Cablevision IS ORDERED to commence carriage of Station WYBE forty-six (46) days from the date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[1] Although WYBE's petition was originally filed on March 8, 1993, it was not perfected and accepted for filing until April 16, 1993.

[2] "Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station." *See* 47 C.F.R. §76.56 (a)(iii).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of the San Mateo	CSR-3775
County Community College	CA0556
District against Televents of	
East County, Inc.	

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993; **Released: July 23, 1993**

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial educational stations. On January 26, 1993, the San Mateo Community College District, licensee of Station KCSM-TV (Educ., Channel 60), San Mateo, California, filed a petition with the Commission stating that its carriage request had been refused by Televents CATV - Brentwood, even though the Grade B contour of KCSM-TV covers the cable system's principal headend at Brentwood, California, according to the station.

2. On April 14, 1993, a revised opposition to the above petition was filed with the Commission by Televents of East County, Inc. d/b/a TCI Cablevision of East County ("TCI"), in which it notes that it no longer utilizes the name Televents CATV-Brentwood, and that its principal headend is in Knightsen, California, not in Brentwood. In addition, TCI claims that, although it does not submit any supporting data and had not previously told the station about any problem, the system could not receive a signal from KCSM-TV at its headend when it ran certain measurements on April 12, 1993. Furthermore, TCI states that KCSM-TV failed to claim that the reference point for its community of license is within fifty miles of TCI's headend, and therefore the station does not qualify as "local," pursuant to §76.55(b)(1) of the Commission's Rules for the purposes of mandatory carriage. Moreover, TCI argues that the Commission should dismiss KCSM-TV's petition for certain procedural defects which prevented TCI from determining, on the basis of the petition itself, whether or not KCSM-TV is entitled to carriage. According to TCI, its copy of KCSM-TV's petition lacked the pertinent correspondence, a map either with KCSM-TV's Grade B contour or the distance in miles from its San Mateo reference point to TCI's principal headend, and it contained no declaration, affidavit, or verification of exhibits.

3. The petition filed with the Commission did include the pertinent correspondence, the appropriate Grade B map of the station's predicted coverage, and a declaration under penalty of perjury from KCSM-TV's General Manager, David H. Hosley, concerning the accuracy of the documents submitted and of the facts recited on behalf of KCSM-TV in this case. Moreover, it appears that TCI has in fact had an opportunity to review the petition's attachments. Accordingly, KCSM-TV's petition will not be dismissed on procedural grounds, as requested by TCI. Nor is KCSM-TV's initial error in identifying TCI's principal headend decisionally significant, since the two towns are both well within KCSM-TV's Grade B contour, thus making the station "local" in both communities for must-carry purposes. Finally, we have received no data as evidence substantiating TCI's initial allegation of poor signal quality from KCSM-TV at TCI's designated headend. The petition filed January 26, 1993, by the San Mateo Community College District, licensee of Station KCSM-TV, therefore IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Televents of East County, Inc. d/b/a TCI Cablevision of East County IS ORDERED to commence the carriage requested by KCSM-TV forty-six (46) days from the release date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-216

In re Applications of

DOUBLE W, INC. File No. BPH-920506MD
("hereafter "Double")

DON TIMMERMAN BROADCASTING, INC. File No. BPH-920507MA
(hereafter "Timmerman")

For Construction Permit
for a New FM Station on Channel 253
in Cedar Falls, Iowa

HEARING DESIGNATION ORDER

Adopted: June 29, 1993; Released: July 22, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. Timmerman petitioned for leave to amend his application after the last day for filing amendments as of right. The subject amendment was not accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendment cannot be accepted for filing, and will be returned below.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidience adduced pursuant to the specified issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That the September 30, 1992 amendment filed by Timmerman IS RETURNED.

6. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.1221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in (a) the Standardized Document Production Order (See Section 1.325(c)(1) of the Rules); and (b) the Standardized integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute resulting in dismissal of the application. *See General Proposals to Reform the Commission's Comparative hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *on reconsideration.*, FCC 91-154, paras. 7-8 & n.3, Appendix Paras. 3 & 5, released May 15, 1991.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

[1] On June 2, 1993 Ronald J. Michaelson filed a request for dismissal of his application which included a declaration of "no consideration." Michaelson's application was dismissed by letter from the Chief, FM Branch dated June 17, 1993 reference 8920-MFW.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-124

In the Matter of

Access to Telecommunications Equipment
and Services by the Hearing Impaired
and Other Disabled Persons

ORDER

Adopted: April 13, 1993; Released: April 15, 1993

By the Commission:

I. INTRODUCTION

1. This Order addresses an Emergency Request for Stay of Section 68.112(b) filed by the Tele-Communications Association. Those rules would require, *inter alia*, that all workplace telephones be hearing aid compatible by May 1, 1993. For the reasons stated herein, we suspend until further notice the amendments adopted in the *Report and Order* (R&O) in CC Docket No 87-124, 7 FCC Rcd. 3472 (1992).

II. BACKGROUND

2. The Hearing Aid Compatibility Act of 1988 required that all telephones manufactured or imported for use in the United States be hearing aid compatible by August 16, 1989 and prohibited the Commission from requiring the retrofitting of any but "coin-operated telephones and telephones provided for emergency use." In 1990 we determined that telephones in work place common areas might be needed by hearing impaired persons in an emergency and required that all telephones in common areas of the workplace be hearing aid compatible. *Memorandum Opinion and Order and Further Notice of Proposed Rule Making (MO&O)*, CC Docket No. 87-124, 5 FCC Rcd 3434 (1990). We determined that we could change the definition of "telephones provided for emergency use," provided we consider the costs and benefits to all telephone users of any new rule, as required by the 1988 Act. In conjunction with the new rule, we proposed that the definition of "telephones provided for emergency use" be expanded to include all workplace telephones and that all workplace telephones be required to be hearing aid compatible because we thought it could not be reliably determined "where a hearing impaired person might be isolated in the event of an emergency." *MO&O* para. 17.

3. In the *R&O* we adopted amendments to 47 CFR Sections 68.4 and 68.112. As amended, Section 68.112(b) requires, *inter alia*, that all workplace telephones be hearing aid compatible by May 1, 1993, for establishments with 20 or more employees, and by May 1, 1994, for establishments with fewer than 20 employees. We considered estimates of average retrofitting costs ranging from $1.50 to $45.14 per telephone and concluded that the $1.50 figure did not accurately represent the costs of retrofitting. We also concluded that the number of telephones affected would be much larger than the limited number in workplace common areas. However, we determined that, with a delay in implementation of the rule, attrition would reduce the number of non-hearing aid compatible telephones in workplaces, substantially reducing the costs of the rule. The decision establishing the rule was not appealed.

4. As the implementation date approached, we began to receive a large number of telephone calls expressing concern or seeking clarification of the new regulations. Many callers asserted that they discovered difficulties in the course of their attempts to comply with rule that we had not foreseen in the *R&O*. We also began to receive requests for individual waivers of the new regulations. One of these, The Petition for Waiver of Hearing-Aid Compatibility Requirements for Goodwill Industries of Seattle, Washington (Goodwill Petition), was put on Public Notice (DA-93-205) for general comment to allow interested parties to file written comments. To date comments, petitions for waiver and written complaints were filed by 47 organizations purporting to represent over a million businesses, government agencies, universities, colleges and non-profit institutions. All 47 organizations objected to the HAC requirements or to the HAC implementation dates.

5. In this context, the Tele-Communications Association (Petitioner), an association of telecommunications managers representing colleges, universities, government agencies, health care facilities and public and private corporations, has petitioned for a stay of Section 68.112(b), pending a reassessment of the legal status, costs, and benefits of the requirement.

III. CONTENTIONS AND DISCUSSION

6. In urging the need for a stay, Petitioner contends that we underestimated the costs of the rule by a substantial amount. It rests its argument in part on the assertions of retrofitters and others who submitted comments on the Goodwill Petition that the number of telephones which are still not hearing aid compatible, as a result of the unforseen length of the recession and the failure of establishments to replace older telephone equipment as rapidly as we had estimated in the *R&O*, is far larger than had been assumed. The *R&O* had initially concluded that the costs of the rule would outweigh its benefits but for the affects of replacement during the period before it was due to be implemented.[1] Our rate-of-replacement estimate was based on estimates presented in Comments in that proceeding by the North American Telecommunications Association (NATA).[2] However, NATA now acknowledges in remarks submitted in response to the Goodwill Petition, that, because of the recession, its estimates were seriously in error.

[1] *R&O* para. 20.
[2] *Id.*

7. Petitioner also contends that safety concerns that led us to establish the new regulations are tenuous, such that a stay in their implementation date will not seriously jeopardize telephone access of the hearing impaired in an emergency. Petitioner argues that all telephones at work stations of hearing-impaired employees, all those in common and public areas of the workplace and all those in other locations where an individual with impaired hearing is most likely to be stranded are already hearing aid compatible. In addition, complaints we have received indicate that non-hearing aid compatible telephones are being removed entirely without being replaced in order to comply with the regulations by May 1 and retrofitters have claimed that backlogged orders may make it otherwise impossible to comply with the May 1 date for many establishments. These arguments raise serious concerns that warrant suspending the amendments to the rules.

IV. CONCLUSION

8. Other arguments presented by Petitioner need not be considered pursuant to Petitioner's stay request. Given the seriousness of the issues discussed above, the quantity of comments we have received and the difficulties involved in fairly assessing their accuracy and worth in the time constraints imposed by the impending implementation date, we find the public interest would best be served by suspending enforcement of hearing aid compatibility for telephones required by Sections 68.112(b)(1), (3), and (5) of our Rules to be hearing aid compatible by May 1, 1993 for establishments with twenty or more employees and by May 1, 1994 for establishments with fewer than twenty employees. Specifically, we suspend enforcement of the requirement that workplace non-common area telephones be hearing aid compatible by May 1, 1993 for establishments with twenty or more employees and by May 1, 1994 for establishments with fewer than twenty employees. Further, we suspend enforcement of the requirement that telephones in confined settings, including but not limited to, rooms in hospitals, residential health care facilities for senior citizens, convalescent homes, and prisons be hearing aid compatible by May 1, 1993, for establishments with twenty or more employees and by May 1, 1994 for establishments with fewer than twenty employees, but enforcement is suspended only if an alternative means of signaling life-threatening situations is available in such confined settings. Finally, we suspend enforcement of the requirement that telephones in hotels and motels be hearing aid compatible by May 1, 1993 for establishments with twenty or more employees and by May 1, 1994 for establishments with fewer than twenty employees, but only in the event that at least ten percent of the rooms in a hotel or motel are equipped to accomodate a hearing impaired customer as set forth in Section 68.112(b)(5)(i)-(iii) of the Commission's Rules, 47 C.F.R. § 68.112(b)(i)-(iii). All other provisions of our hearing aid compatibility rules remain in effect and will be enforced. Any telephone that is required by our rules to be hearing aid compatible prior to May 1, 1993 is unaffected by this Order. The Sections of our Rules that are not suspended herein require that telephones in certain parts of all locations mentioned above be hearing aid compatible, for example, those telephones in areas occupied by people with hearing impairments who may need them to signal life-threatening or emergency situations.

9. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and 710 of the Communications Act, 47 U.S.C. §§ 1, 154(i) and 610, and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that enforcement of hearing aid compatibility for telephones required by Sections 68.112(b)(1), 68.112(b)(3), and 68.112(b)(5) of the Commission's Rules, 47 C.F.R. §§ 68.112(b)(1), 68.112(b)(3), 68.112(b)(5), to be hearing aid compatible as of May 1, 1993 IS SUSPENDED until further notice. This action does not alter requirements imposed by Section 68.112 for telephones that must be hearing aid compatible prior to May 1, 1993.

10. IT IS FURTHER ORDERED that this order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1993 Annual Access Tariff Filings	**CC Docket No. 93-193**
National Exchange Carrier Association	Transmittal No. 556
Universal Service Fund and Lifeline Assistance Rates	**CC Docket No. 93-123**
GSF Order Compliance Filings	
Bell Operating Companies' Tariff for the 800 Service Management System and 800 Data Base Access Tariffs	**CC Docket No. 93-129**

MEMORANDUM OPINION AND ORDER SUSPENDING RATES AND DESIGNATING ISSUES FOR INVESTIGATION

Adopted: June 23, 1993; Released: June 23, 1993

By the Acting Chief, Common Carrier Bureau:

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I. EXECUTIVE SUMMARY

1. Section 69.3(a)[1] of the Commission's rules requires the local exchange carriers (LECs) and the National Exchange Carrier Association (NECA) to file annual access tariffs on April 2, 1993, to become effective July 1, 1993. As required

[1] 47 C.F.R. § 69.3(a).

by Section 69.3(f)[2] of the Commission's rules, LECs electing to be subject to Section 61.39[3] filed biennial tariff filings for traffic sensitive rates on April 2, 1993 to become effective July 1, 1993. This Order reviews these annual and biennial filings, and directs these parties, where appropriate, to refile rates in accordance with this Order.[4]

2. The Tier 1 LECs[5] and NECA filed total access reductions of $184 million. These reductions are apportioned among access categories as follows: end user charges would increase $73.1 million, carrier common line charges would be reduced $229.1 million, switched traffic sensitive charges would be reduced $21.1 million, and special access charges would be reduced $6.7 million. The change in switched access (carrier common line plus switched traffic sensitive) is a net reduction, of $250 million, or 2.1 percent. Two LECS, Lincoln and Centel, elected to file pursuant to price cap regulation for the first time.

3. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules,[6] this Order suspends the annual access rates for one day and initiates an investigation of tariffs filed by price cap LECs seeking exogenous treatment of Statement of Financial Accounting Standards 106 (SFAS-106) transitional benefit obligation (TBO) amounts. This Order also suspends for one day and initiates an investigation concerning how sharing and low-end adjustments to the price cap indexes should be reflected in the rate of return used to determine sharing and low-end adjustments in the following year. This Order also suspends other portions of the annual access rates for one day and initiates an investigation on a variety of miscellaneous issues raised by petitioners or identified by the Bureau.

II. PRICE CAP CARRIERS

A. Exogenous Treatment of Accounting Changes for Retiree Health Costs

1) Background

4. In December 1990, the Financial Accounting Standards Board (FASB) adopted SFAS-106, requiring that companies account for postretirement benefits other than pensions (OPEBs) on an accrual basis, to begin after December 15, 1992. Before SFAS-106, OPEBs were accounted for on a "pay-as-you-go" basis. Under accrual methods, OPEBs are treated as deferred compensation earned by employees as they work. SFAS-106 also requires companies to book previously unaccrued obligation amounts for OPEBs to retirees and active employees existing as of the adoption date. This amount is termed the transitional benefit obligation (TBO).

5. The Common Carrier Bureau issued an Order approving the requests of two LECs to adopt SFAS-106 accounting on or before January 1, 1993.[7] However, to avoid distortions of LEC operating results from a one-time inclusion of the TBO, the Bureau directed carriers to use the SFAS-106 option of spreading the TBO over a 20-year period, or over the average remaining service period of active plan participants.[8]

6. Subsequently, several LECs subject to price cap regulation filed tariff transmittals which sought exogenous treatment[9] of OPEBs.[10] These transmittals were suspended and investigated.[11] On January 22, 1993, the Commission adopted an order denying the LECs' request for exogenous treatment of OPEBs.[12] However, the decision did not foreclose further consideration of exogenous treatment of TBO

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[2] 47 C.F.R. § 69.3(f).

[3] 47 C.F.R. § 61.39.

[4] Appendix A contains a list of parties filing pleadings in this proceeding and provides the full and abbreviated names of the parties as used in this Order.

[5] Tier 1 companies have annual revenues from regulated telecommunications operations of $100 million or more. Tier 2 companies are companies having annual revenues from regulated telecommunications operations of less than $100 million. Tier 1 companies account for over 95 percent of total interstate access revenues.

[6] 47 U.S.C. § 204(a); 47 C.F.R. § 0.291.

[7] Southwestern Bell Corporation, GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions, 6 FCC Rcd 7560 (Com. Car. Bur. 1991). This order was intended to conform the Commission's Uniform System of Accounts (USOA) with generally accepted accounting principles (GAAP).

[8] *Id.; see also* Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32, 7 FCC Rcd 2872 (1992).

[9] The list of exogenous cost changes LECs may file appears in Section 61.45(d) of the Commission's rules. GAAP changes are not specifically recognized on the list, but the Commission, in the reconsideration order in the price cap regulation docket stated that the Commission would consider the issue of whether OPEBs are exogenous once SFAS-106 became final. Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd 2637, 2663-64 (1991).

[10] *See* Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 497 (Filed February 28, 1992 to be effective July 2, 1992); US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4, Transmittal No. 246 (Filed April 3, 1992 to be effective August 1, 1992); and Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1579 (Filed April 16, 1992, to be effective January 1, 1993).

[11] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, 7 FCC Rcd 2724 (Com. Car. Bur. 1992). The Bureau designated the following issues for investigation: 1) whether the LECs have borne their burden of demonstrating that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules; and 2) if these cost changes are treated as exogenous: (a) should costs associated with implementation of SFAS-106 prior to January 1, 1993 (when the accounting change becomes mandatory) be treated as exogenous; (b) are the assumptions made by the individual LECs in calculating these costs reasonable; (c) given these assumptions, have the individual LECs correctly computed the exogenous cost changes; and (d) are the individual LEC allocations of these costs among the price cap baskets consistent with Commission rules. *Id.* at 2725-26.

[12] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, 8 FCC Rcd 1024 (1993)(*OPEB Order).*

amounts based on a better and more complete record.[13] The annual 1993 access tariff filings were suggested as a possible forum for such consideration.[14]

7. The *OPEB Order* concluded that not all changes in generally accepted accounting principles (GAAP) are automatically entitled to exogenous treatment.[15] The *OPEB Order* also observed that the burden of proof is on the carrier seeking exogenous treatment.[16] The *OPEB Order* outlined the two-pronged test for whether GAAP changes should be treated exogenously. The first prong requires the carrier to show that the imposition of the costs is not within the control of the price cap carrier. The second prong requires the carrier to show that the costs are not reflected in the price cap formula, for example in the GNP-PI.[17] The *OPEB Order* also concludes that "this GAAP change does not create an economic cost change for companies in general or for the LECs in particular. . . ."[18]

8. The *OPEB Order* concluded that, at least as to going forward OPEB amounts, the LECs have substantial control over the amount booked as OPEBs. Accordingly, the LECs failed the first prong of the exogenous cost test for going-forward amounts.[19] Concerning the TBO amounts, however, the Commission stated that it did not have to resolve the control issue because the LECs failed to meet their burden of proving that the amounts claimed as the TBO had not already been accounted for in the GNP-PI, the second prong of the test.[20]

9. The LECs based their second-prong showing on two studies: one prepared for the United States Telephone Association by Godwins; and one prepared by National Economic Research Associates, Inc. (NERA). The *OPEB Order* concluded that neither study proved that its initial assumptions were correct; thus, any conclusion derived from them would be speculative.[21] The *OPEB Order* expressed reservation about the speculative nature and close dependency of results on the initial assumptions, stating "[w]ere we to grant exogenous treatment . . . the LECs would only have to beat those assumptions to realize an apparent productivity gain."[22]

10. The *OPEB Order* also addressed an intertemporal double-counting issue. This issue arises from the intertemporal nature of the SFAS-106 change. Because pay-as-you-go amounts for OPEBs are already built into the LECs' rates, the GNP-PI portion of the X factor in the PCIs would give the LECs all the funds they need over time to cover these expenses. The immediate recovery of these costs (on an accrual basis) as an exogenous change, and the recovery over time through the GNP-PI portion of the X factor, would result in double counting.[23] The *OPEB Order* concluded that, absent absolute accuracy regarding forecasts of medical trends, discount rates, retirement rates, and other demographic assumptions, LECs would have productivity gains or losses by beating, or failing to beat, the assumptions. The order concluded that a year-by-year true-up mechanism necessary to deal with this issue would be an undesirable and complex addition to the price cap plan.[24]

11. The *OPEB Order* mentioned the rate of return used to establish initial rates as another potential source of double counting with respect to OPEBs; *i.e.*, since there must have been at least some doubt about whether the LECs would be able to change their rates when SFAS-106 was implemented, this additional risk would be reflected in a relatively higher return. Thus, the SFAS-106 change would already be reflected in the initial rate of return. In addition, the Order questioned whether SFAS-106 amounts are already included in the studies used to determine the productivity factor in the price cap formula. The Order stated that there are two possible questions about double counting with the productivity factor which must be considered, but that the LECs failed to address: (1) what would have been the effect on the studies used to derive the productivity factor of excluding these amounts; and, (2) how would the Commission have weighed this change in the results of the studies when it set the productivity factor. The order noted that exclusion of these amounts from the short run productivity study would have resulted in a greater reduction in LEC costs in the period studied. The greater reduction in LEC costs would have implied a larger productivity factor in the short run study. If this were the case, the Commission might well have chosen a higher productivity factor for the price cap formula.[25]

2) 1993 Annual Access Tariffs

12. Ameritech, Bell Atlantic, BellSouth, GTOC, GTSC, Lincoln, NYNEX, Rochester, Southwestern, and US West seek exogenous treatment of TBO amounts.[26] In general, the LECs seeking exogenous treatment for OPEB amounts have limited the request in the 1993 annual access filings to incremental costs associated with the implementation of SFAS-106 for existing retired employees.[27] These LECs argue that they should be allowed to treat the TBO amounts exogenously based on the requirements outlined in the *OPEB Order; i.e.*, that the TBO amounts are beyond the carriers' control, and that amounts included are not otherwise included in the price cap formula.[28]

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[13] *Id.* at 1037.

[14] *Id.*

[15] *Id.* at 1026, citing Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice, 4 FCC Rcd 3379, *modified on recon.*, 6 FCC Rcd 665 at 674 (1991); Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990), *modified on recon.*, 6 FCC Rcd 2637 at 2663-65 (1991).

[16] *OPEB Order* at 1026 and 1033.

[17] *Id.* at 1033.

[18] *Id.* at 1037.

[19] *OPEB Order* at 1033.

[20] *Id.* at 1034.

[21] *Id.* Godwins assumed that SFAS-106 is an economic cost change that will affect all companies' costs and prices in the coming years and contended that the effect on the LECs is disproportionate because they typically differ from other companies in several characteristics. NERA argued that SFAS-106 will have none of these effects for most companies because it does not change their actual economic costs and liabilities.

[22] *Id.* at 1035.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 1036 and n.117.

[26] Centel, United and Pacific have not sought exogenous treatment of TBO expenses in their 1993 annual access filings.

[27] *See* Ameritech D&J at 8; Bell Atlantic D&J at 4-20; BellSouth D&J at A-12; GTOC D&J at 15; Lincoln D&J at 15; NYNEX D&J at 49; Rochester D&J at 1-9; Southwestern D&J at 3-1; and US West D&J at 2-6.

[28] *See* Ameritech D&J at 10; Bell Atlantic D&J at 4-21 - 4-22;

a) Control issues

i) LECs' positions

13. The LECs argue that their control over these costs (*i.e.*, their ability to adjust benefit plans for existing retirees) is limited, because, if these retiree benefit packages are dramatically changed, current employees will decrease the value of any deferred compensation when evaluating total compensation packages and will require higher immediate compensation or seek employment elsewhere.[29] Ameritech, for example, argues that in a competitive labor market, employees evaluate the total compensation package, or mix of wages and benefits. Thus, Ameritech states, if prior to price caps, Ameritech had offered higher wages and fewer benefits, its rates would have been higher. Accordingly, Ameritech contends, its PCI would be higher now.[30]

14. The LECs also argue that these costs are not within their control because they were based on commitments made prior to the adoption of SFAS 106. Further, these costs, the LECs assert, were based mainly on labor contracts negotiated between the companies and unions and cannot be unilaterally changed by the companies.[31] The remainder of current retirees costs associated with the TBO are for retired management employees. Bell Atlantic, for example, asserts that several court decisions have blocked companies' attempts to limit retired management employees' benefits and it may be extremely difficult for Bell Atlantic to change these amounts. Therefore, the LECs assert, the cost of current retirees' benefits is beyond their control.[32]

15. NYNEX, Lincoln and Rochester argue that the SFAS 106 change is beyond their control because the Commission ordered implementation of SFAS-106 accounting and because the amounts are dictated by actuarial estimates.[33] Southwestern argues that it has been extremely aggressive in its management of health care costs. Because of this aggressive management, Southwestern's valuation of the TBO already contains a highly significant curtailment of health care inflation rates.[34] Southwestern argues that it is willing to make reasonable future adjustments to the exogenous amount pursuant to annual reporting of changes which affect TBO amounts.[35]

ii) Petitions

16. Petitioners generally agree that the LECs seeking exogenous treatment of TBO amounts have failed to make the required showing established in the *OPEB Order*.[36] AT&T argues that a lack of control over regulatory action is not sufficient to justify exogenous treatment. Drawing an analogy to the treatment of depreciation rates, AT&T asserts that LECs do have the ability to influence and control the cost of benefits represented by the TBO, negating any right to exogenous treatment.[37] AT&T further argues that, most fundamentally, no carrier has produced evidence from its medical plan descriptions or labor contracts showing that it has relinquished the right to modify or withdraw its benefit plans.[38] Both Ad Hoc and AT&T assert that there is no statutory right or entitlement to benefits under the Employee Retirement Income Security Act (ERISA).[39] Thus, these parties assert that no rights vest with employees, and there is a strong presumption that employers retain contractual rights to modify, suspend or terminate plans through their contracts with the union. Finally, concerning the control issue, AT&T contends that the fact that the LECs have taken measures to reduce costs is a clear indication of carrier control.[40]

b) Double-counting issues

i) LECs' positions

17. All LECs except Rochester endorse the Godwins study conclusions and describe them as very conservative, erring on the side of underestimating the TBO amounts not reflected in the GNP-PI.[41] Rochester applies the conclusion of the NERA study in determining the portion of TBO expenses for which it seeks exogenous treatment.[42]

18. A number of the companies refer to a second study performed by Godwins. This study was commissioned to provide additional sensitivity analysis[43] to address some concerns raised in the *OPEB Order*.[44] This second study by Godwins is intended to provide: (1) a demonstration of the conservative nature of the original Godwins study in comparison to the NERA study; (2) an explanation of the range of values used in the model to perform the sensitivity analysis of 648 variations of the basic assumption values; and, (3) a summary and examination of the results of

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BellSouth D&J at A-11 - A-14; GTOC D&J at 10; Lincoln D&J at 15-16; NYNEX D&J at 53-57; Rochester D&J at 1-9; Southwestern D&J at 3-4 - 3-5; and US West D&J at 2-14 -2-17.

[29] Ameritech D&J at 8; *accord* NYNEX D&J at 52-53; GT0C D&J at 17.

[30] Ameritech D&J at 8.

[31] *See* Bell Atlantic Reply at 3; GTE Reply at 4-7; NYNEX Reply at 4; Southwestern Reply at 8-10; SNET Reply at 8.

[32] Bell Atlantic D&J at 4-21 - 4-22.

[33] NYNEX D&J at 52-53; Rochester D&J at 1-9 - 1-10; Rochester Reply at 4; Lincoln D&J at 15.

[34] Southwestern D&J at 3-17.

[35] Southwestern Reply at 6-7; *see accord* US West Reply at 9-10.

[36] Ad Hoc Petition at 3; AT&T Petition at ii and 2-6; ICA Petition at 1 and 3; MCI Petition at 2; Sprint Petition at 2 and 3; *see also* WilTel Petition at 4-5.

[37] AT&T Petition at 6-7.

[38] *Id.* at 8.

[39] Ad Hoc Petition at 9-10; AT&T Petition at 7, (citing, *In re White Farm Equipment Co.*, 788 F. 2d 1186, 1193 (6th Cir. 1986) (nothing in ERISA precludes an employer from changing or withdrawing OPEBs from its employees or retirees.)).

[40] AT&T Petition at 10.

[41] *See e.g.*, Southwestern Bell D&J at 3-6, n.14, defining as "conservative" assumptions which ensure that the estimate of double counting to be removed from the exogenous request was overstated, and that the need for exogenous cost increases was understated. According to Southwestern, the original Godwins study qualified as a conservative approach to justifying the size of the exogenous factor for OPEBs.

[42] Rochester D&J at 1-13; Rochester Reply at 8-9.

[43] "Sensitivity analysis" involves testing the validity of conclusions by altering the key assumptions underlying a study. If, within a reasonable range of assumptions, the conclusions remain roughly the same, then they could reasonably be considered correct.

[44] *See OPEB Order*, 8 FCC Rcd at 1035.

Godwins' additional sensitivity analysis.[45] The LEC's arguments concerning double counting in the GNP-PI rely on these points.[46]

19. The LECs argue that any amounts that could impact any part of the price cap formula were removed from the GNP-PI. Bell Atlantic asserts, for example, that the current retirees' portion of the TBO represents amounts since January 1, 1991, the beginning date for price caps. SFAS 106 was not promulgated until December of 1990, and, Bell Atlantic is not aware of any firm implementing SFAS 106 prior to January 1, 1991. Therefore, Bell Atlantic argues, the current retirees' portion of the TBO could not have been reflected in past GNP-PI factors except for the pay-as-you-go and Voluntary Employee Benefits Association (VEBA) funded amounts. Bell Atlantic contends that it eliminated this concern by reducing its exogenous cost amount for the entire pay-as-you-go amounts.[47]

20. Several LECs address other areas of potential double counting as discussed in the *OPEB Order*. Concerning the rate of return, Ameritech, for example, argues that if investors assumed there would be no change in rates when SFAS-106 was implemented, they may have required a higher rate of return to compute going-in rates under price caps. Ameritech asserts that investors relied upon the initial price cap orders' indications that all mandatory GAAP changes would receive exogenous treatment.[48] Southwestern argues that, at the time of the rate of return prescription, investor information, consistent with the price cap orders, would be that exogenous treatment would be afforded all GAAP changes.[49]

21. Ameritech contends that the VEBA impact on the productivity factor is not relevant in this filing because VEBA Trusts formed prior to price caps were established to recognize deferred compensation for active employees, not retirees. Ameritech argues that it requests exogenous treatment only for the incremental OPEB amounts for existing retirees in this filing, the concern that VEBA costs distort the level of productivity experienced by LECs is not a reason to deny exogenous cost treatment of OPEBs.[50]

22. NYNEX argues that in the price cap proceeding, the Commission acknowledged that none of the productivity studies was entirely conclusive, but rather provided only a range of values. NYNEX contends that there is no persuasive evidence to suggest that if the studies were adjusted for VEBA costs incurred by some LECS, there would have been a significant difference in that range.[51]

23. Southwestern states that it has requested exogenous treatment for only the increment by which SFAS-106 costs exceed pay-as-you-go costs. By doing so, Southwestern asserts, it has eliminated any of the potential intertemporal double counting described in the *OPEB Order*.[52]

ii) Petitions

24. Petitioners generally argue that the second Godwins study does not meet the LECs' burden of demonstrating that exogenous treatment is warranted.[53] Ad Hoc argues that the issue addressed by the Godwins study constitutes only a small part of the basis for the Commission's rejection of OPEBs, and that the LECs do not adequately address these remaining double counting concerns.[54] Ad Hoc also argues that many other publicly-traded firms have had to recognize the same accounting effects, and the LECs have been unable to show why they should be treated differently.[55]

25. AT&T argues that the expanded sensitivity analysis provided by Godwins does not alter the fact that the Godwins estimates are based on assumptions not corroborated by either empirical evidence or statistical analysis. For example, AT&T notes, Godwins does not provide evidence or analysis of the magnitude of wage or price changes in the economy resulting from SFAS-106 implementation.[56] AT&T contends that this is a critical flaw because the sensitivity analysis can only indicate the range of reasonable outcomes, assuming that the model is appropriate in the first place.[57] AT&T further argues that the TBO is a "sunk" cost which could affect the value of a firm (much like an adverse ruling in a product liability suit), but has nothing to do with the firm's current labor expense. Furthermore, AT&T argues, there is no evidence that a "sunk" cost would translate to a price increase by nonregulated firms.[58]

26. Concerning the rate of return double counting issue, AT&T argues that, as shown by the reaction of Standard & Poor's (S&P) to FASB's 1986 SFAS-106 exposure draft (one year prior to the LEC Represcription Order), the institutional investor was not only aware of the OPEB issue, but had formed an opinion on the relevance of SFAS 106 to the capital markets. AT&T contends that S&P concluded that for debt rating purposes, it would focus on current cash outlays rather than speculative future accruals.[59] In other words, AT&T argues, the cash OPEB amounts built into the LECs' rate of return, not the accrued costs represented by SFAS-106, are the relevant costs for determining the LECs' cost of equity capital. Thus, AT&T concluded, because the price cap LECs' rate of

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[45] *See* Ameritech D&J at 9-10.

[46] *See* BellSouth D&J at A-13 - A-16; GTOC D&J at 19-21; GTE Reply at 7-9; Lincoln D&J at 16; NYNEX D&J at 60; NYNEX Reply at 4; SNET D&J at 19-20; Southwestern D&J at 3-6 - 3-12; and US West D&J at 2-13.

[47] Bell Atlantic D&J at 4-23.

[48] Ameritech D&J at 13; GTE Reply at 12.

[49] *Id.* at 3-30 - 3-31; Southwestern Reply at 25-26.

[50] Ameritech D&J at 13-14.

[51] NYNEX D&J at 62; *see also* Bell Atlantic D&J at 4-24 - 4-25.

[52] Southwestern D&J at 3-32.

[53] Ad Hoc Petition at 4; AT&T Petition at 12-20; ICA Petition at 3; MCI Petition at 10; Sprint Petition at 3.

[54] Ad Hoc Petition at 5 (stating other areas of potential double counting include: national price indices; pay-as-you-go trends of these costs versus the incremental SFAS-106 accounting effect; investor perceptions and required returns used both to initialize the LEC price caps and to support the sharing and lower formula adjustment mechanism; and in the price cap productivity factor calculation); *see also* MCI Petition at 10-16 (addressing intertemporal double counting and double counting in rate of return and the productivity factor).

[55] Ad Hoc Petition at 14; *see also* ICA Petition at 1.

[56] AT&T Petition at 15-16.

[57] *Id.*

[58] *Id.* at 16-17; *but see* BellSouth Reply at 5-6.

[59] AT&T Petition at App. B-5, 2 (a copy of S&P announcement is included in the petition).

return already includes a risk assessment based on those costs, to grant exogenous treatment to the TBO would entail double counting.[60]

3) Discussion

27. LEC claims in the 1993 annual access filings for exogenous treatment of TBO amounts include complex analysis and reasoning that demand equally complex review. The claims raise difficult issues concerning the degree of control LECs have over TBO amounts and concerning potential double-counting in several parts of the price cap formula.

28. The *OPEB Order* restated that, for GAAP changes, the burden is on the LEC seeking exogenous treatment to prove that the amounts are not within the control of the price cap carrier and that the costs are not already reflected in the price cap formula. The record associated with the 1993 annual price cap filings is inconclusive concerning the control issue. Some LECs argue that these costs are absolutely not within the LEC's control.[61] Other LECs assert that they have control, but that the control is limited.[62] At least one company may have the unilateral power to "modify, suspend or terminate" benefits.[63]

29. The record concerning double counting in the GNP-PI has been enhanced by a second Godwins study. However, other potential areas of double counting discussed in the *OPEB Order* have not been sufficiently addressed. These include: the intertemporal double counting issue; double counting related to the inclusion of costs in the prescription of the rate of return which determined the initial price cap rates; and the anticipation of SFAS-106 costs in the studies underlying the productivity factors. These issues are of significant monetary importance to both the companies and their ratepayers. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes based on the claims for exogenous treatment of TBO amounts is warranted. We therefore suspend the affected tariffs for one day, impose an accounting order, and initiate an investigation. We designate issues for investigation in Section VI of this Order. Parties to the investigation are listed at Appendix B of this Order.

B. Sharing and Low-End Adjustment Issues

1) Implementation of the Sharing and Low End Adjustment Mechanism

30. AT&T contends that several price cap LECs appear to have improperly implemented the sharing and low end adjustment mechanisms. In particular, AT&T alleges that NYNEX and SNET have erred in restating their 1992 calendar year earnings by excluding revenues received in 1992 from a low-end adjustment.[64]

31. NYNEX responds that removal of the low-end adjustment revenues is required to effect the earnings limitations of price caps. Otherwise, NYNEX argues, a LEC that underearns would never be able to attract capital and stay in business. Additionally, NYNEX argues that its treatment of the low-end adjustment is consistent with the Commission's rules.[65] Similarly, SNET argues that the exclusion of its 1992 low-end adjustment revenues from 1991 earnings is necessary to comply with the price cap rules.[66]

32. AT&T raises an issue which applies to all LECs that had a sharing amount or low end adjustment based on 1991 earnings. This issue is being addressed in a Notice of Proposed Rulemaking.[67] The proceeding would clarify the LEC price cap rules to require that price cap LECs compute their rates of return for the price cap sharing and low-end adjustment mechanisms in basically the same manner as rate of return carriers do in determining overearnings. The proposed rules include an adjustment to "add back" the effect on rates of return of both rate increases and reductions under price caps to share or increase earnings from earlier years.[68] Because the issue is unresolved we suspend the affected tariffs for one day, impose an accounting order, and initiate an investigation pertaining to all LECs that had a sharing amount or low-end adjustment last year.

2) Omission of Interest from Revised Lower Formula Adjustment Amounts of GTE and NYNEX

33. AT&T and MCI argue that several LECs[69] that restated their 1991 Form 492 results have reported higher earnings than previously reported, thus requiring that these carriers make an adjustment that effectively reduces the low-end adjustment they received for the 1992/93 tariff period. However, petitioners argue, these carriers have not included an interest amount in their calculations.[70]

34. NYNEX and GTE respond that the Commission required LECS to include interest on the original sharing obligations, while it did not allow the LECs to include interest on the original low-end adjustment. Thus, NYNEX and GTE argue, if the Commission had allowed NYNEX to include interest on the original low-end adjustment, it would have gained more revenues than it would return by adding interest to its 1991 earnings revisions.[71] GTE also asserts that such computations are not supportable by GAAP.[72]

35. We have reviewed the GTOC, GSTC and NYNEX transmittal concerning their omission of interest from revised low-end adjustments. We conclude that the transmit-

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[60] *Id.* at 3.
[61] *See* Bell Atlantic D&J at 4-21 - 4-22.
[62] *See* Ameritech D&J at 8.
[63] *See* Lincoln D&J at 15.
[64] AT&T Petition at 20-21; *accord* MCI Petition at 21-24.
[65] NYNEX Reply at 2-3.
[66] SNET Reply at 4.
[67] Price Cap Regulation for Local Exchange Carriers Rate of Return Sharing and Lower Formula Adjustment, Notice of Proposed Rulemaking, CC Docket No. 93-179, FCC No. 93-325, (adopted June 18, 1993).
[68] In the 1993 access filings, only those LECs that made low-end adjustments in 1992 (NYNEX and SNET) added back amounts.
[69] NYNEX, GTE System - New York; GTE System - Texas; GTE System - South; GTE North (Idaho, Iowa, Ohio, Minnesota, Montana and Nebraska); and GTE Southwest.
[70] AT&T Petition at 28-30; MCI Petition at 24.
[71] NYNEX Reply at 4-5; GTE Reply at 14-15.
[72] GTE Reply at 14-15.

tals are not patently unlawful so as to warrant rejection. We also conclude that no question has been raised which warrants investigation at this time.[73]

3) Unexplained Earnings Revisions Affecting Sharing of BellSouth and Low-End Adjustment of SNET

36. AT&T asserts that, based on revised earnings in BellSouth's final report for calendar year 1991, BellSouth purports to revise the calculation of its original sharing amount downward by approximately $8.8 million, and thus increase its PCIs for the 1993-94 year to implement the change to its previously-reported sharing obligation for 1992. Similarly, AT&T contends that SNET has revised its 1991 earnings from 8.86 percent to 8.56 percent, which would increase the amount of its low-end adjustment for that year by approximately $3.2 million. AT&T argues that neither BellSouth nor SNET has provided sufficient explanation of the basis for its changes.[74]

37. BellSouth responds that the revision to its Form 492 Report and to its sharing amount for 1991 is necessary to properly reflect retroactive revenue billing adjustments. In addition, as a result of a decision to correct an error, BellSouth made a retroactive separations cost adjustment to properly reflect interstate Operator Transfer Service investment and expenses in calendar year 1991. BellSouth states that these interstate investment and expense revisions were not previously reported in BellSouth's initial Form 492 Report.[75]

38. SNET also responds that certain adjustments to its 1991 earnings are justified. SNET states that the primary reason for revision is completion of a study demonstrating a cash working capital requirement of $11.2 million in 1991. None was reported previously.[76]

39. We have reviewed the transmittals of BellSouth and SNET concerning earnings revisions affecting sharing and low-end adjustments of BellSouth and SNET respectively and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to require rejection, and that no question has been presented that warrants investigation at this time.

4) Bell Atlantic's Omission of End User Revenues from the Common Line Basket for Sharing Purposes

40. AT&T argues that Bell Atlantic omitted end user revenues from the common line basket revenues in violation of the *1992 Annual Access Order's* [77] requirement that sharing amounts be distributed among baskets based on their proportionate revenues.[78] AT&T contends that Bell Atlantic's omission has a substantial effect on the allocation of sharing among baskets.[79] AT&T contends that the Commission should require Bell Atlantic to reallocate its 1992 sharing amounts, to adjust the allocation of its 1991 sharing true-ups, and to recalculate its price cap indices to reflect the change in the sharing allocation.[80]

41. Bell Atlantic argues that to include the end user revenues in the common line basket for purposes of determining sharing would be inconsistent with the Commission's requirement that sharing adjustments be flowed through on a "cost causative basis."[81] Bell Atlantic asserts that it complied with this requirement by allocating 1992 sharing amounts using an allocator that includes revenues that are affected by sharing. End user revenues, Bell Atlantic argues, are not cost causative and were, therefore, properly excluded from the allocator.[82]

42. The *LEC Price Cap Order*[83] states that under the sharing mechanism the PCI will be adjusted for all baskets on a cost causative basis. The *1992 Annual Access Order* required carriers to allocate sharing obligations on a cost causative basis and found that revenues can be used as a proxy for basket costs.[84] The *1992 Annual Access Order* also states that sharing allocations based on revenues most closely comport with the goals of the Commission's price cap plan to move away from cost allocation systems and instead focus on prices. It is not clear that Bell Atlantic's exclusion of end user revenues from the common line basket for sharing purposes is consistent with the *LEC Price Cap Order* and the *1992 Annual Access Order*. We conclude that there is sufficient uncertainty to warrant investigation of Bell Atlantic's PCI adjustments. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we are suspending Bell Atlantic's rates for one day, imposing an accounting order, and initiating an investigation. We designate issues in Section VI of this Order.

5) Ameritech's Reversal Calculation for Sharing Amounts

43. Sprint argues that Ameritech's PCI is inflated due to problems associated with the reversal of 1992 sharing

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[73] The parties' arguments, however, raise an issue that may require Commission reevaluation of its rules. The Commission does not have a rule which requires LECs to compute interest on the amount of underearnings that occur before the effective date of the low-end adjustment. The Commission does not require that interest be added when the low-end adjustment is revised.

[74] AT&T Petition at 25-26.

[75] BellSouth Reply at 11-12.

[76] SNET Reply at 2.

[77] *1992 Annual Access Order*, 7 FCC Rcd at 4732-33 (Com. Car. Bur. 1992).

[78] AT&T Petition at 26-27.

[79] According to AT&T, Bell Atlantic's reported sharing was as follows: Common Line (21%, or $1.749 million), Traffic Sensitive (51.7% or $4.299 million), Special Access (20%, or $1.861 million), and Interexchange (7.2%, or $600,000). Using the corrected revenues, these allocations should be, according to AT&T: Common Line (43.4% or $3.606 million), Traffic Sensitive (37.1%, or $3.083 million), Special Access (14.3%, or $1.118 million), and Interexchange (5.2%, or $432,000).

[80] AT&T Petition at 27.

[81] Bell Atlantic Reply at 11-12, citing Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 2637, 2689 (1991).

[82] *Id.*

[83] *See* Second Report and Order, 5 FCC Rcd 6786, 6805 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.* 6 FCC Rcd 2637 (1991), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *upheld on appeal, National Rural Telecom Association v. FCC*, Nos. 91-1300, 91-1303, 91-1304 and 91-1326, slip op. (D.C. Cir. Mar. 26, 1993).

[84] 1992 Annual Access Tariff Filings, CC Docket No. 92-141, 7 FCC Rcd 4731, 4732-33 (Com. Car. Bur. 1992)(*1992 Annual Access Order*).

amounts as directed by the *1993 TRP Order*.[85] Reversal of prior year sharing is an exogenous cost in the current year, due to its nature as a one-time event mandated by Commission rules.[86] Specifically, Sprint asserts, Ameritech's estimate of the 1993 removal is 1.66 percent higher than the 1992 sharing. However, Sprint continues, the increase in Ameritech's interstate revenues between 1992 and 1993 was only 1.36 percent. Sprint concludes that, if the 1.36 percent increase in revenues is applied to the 1992 sharing amount, the 1993 removal amount would be $18.436 million, or about $54,000 less than the amount claimed by Ameritech.[87]

44. Ameritech argues that Sprint incorrectly interprets the instructions for the removal of sharing provided in the *1993 TRP Order*. Ameritech replies that it calculated the amount individually for each basket based on the percentage change in the base revenue, or "R" value, for that basket. Ameritech argues that there is no "R" value for total interstate, and that it would be inappropriate to add the "R" values for each basket to obtain a total interstate value because the imputed access revenues for interstate intraLATA traffic would be double counted since they appear in the interexchange basket as well as the common line and traffic sensitive baskets. Therefore, Ameritech asserts it properly calculated the sharing removal amounts.[88]

45. We have reviewed Ameritech's calculations of its sharing amounts in its Transmittal No. 702 and all associated pleadings. We conclude that no question has been presented that warrants investigation at this time.

C. US West Exogenous Impact of Dial Equipment Minutes (DEM) Transition

46. AT&T and MCI argue that US West has underreported its dial equipment minutes (DEM) exogenous cost reduction in the calculation of the Traffic Sensitive basket PCI. US West reports a reduction of $753,099 in exogenous costs, as the last step in the transition to DEM as the separations factor for local switching equipment.[89] AT&T argues that this amount deviates significantly from those calculated by other Bell Operating Companies.[90] AT&T asserts that, from the Commission's ARMIS reports, it has calculated that US West should include a further reduction of $5.677 million. MCI estimates a reduction of $5.5 million would be correct.

47. US West argues that petitioners' calculations employ a methodology which differs from that used by US West to calculate its DEM adjustment. The primary difference in methodologies, US West asserts, is the manner in which the DEM allocator is calculated. According to US West, AT&T and MCI hold the allocator constant from period to period while US West forecasts the minutes used to compute the overall DEM allocator for the prospective tariff period.[91] In support of its calculations, US West provides: (1) supporting data with explanation of the forecasting process; (2) explanation of how the interstate DEM allocation factor is derived; and (3) explanation of how it developed its 1993 DEM exogenous cost adjustment.

48. Years 1988 through 1992 are transition years for the purpose of using DEM as an interstate allocator for certain investments. Transition rules give decreasing weight to the 1987 allocator and increasing weight to the DEM allocator.[92] The Commission allows exogenous cost treatment of this event to the extent that changes in the transition rules from the previous to the current tariff year would have affected interstate revenues in the current tariff year.

49. US West's method of calculating its DEM adjustment is different from the practice of other LECs. In addition, this difference has a significant monetary effect and appears not to be in accordance with Commission rules. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of US West's exogenous treatment of the DEMs transition is warranted. Therefore, we are suspending US West's rates for one day, imposing an accounting order, and initiating an investigation. Issues designated for investigation appear in Section VI of this Order.

D. Southwestern's Dark Fiber Rates

50. MCI and Wiltel ask that we reject or suspend and investigate Southwestern's dark fiber rate increases. MCI argues that, in the 1992 annual access filing, Southwestern increased dark fiber rates from a prescribed rate of $112 per strand, per mile to $150, an increase of 34 percent. In the current filing, MCI asserts, Southwestern is proposing an additional increase to $215 per strand, per mile. This constitutes, MCI contends, an additional increase of 43 percent above Southwestern's current dark fiber rates, and a cumulative increase of 92 percent over the prescribed rate of $112 per strand, per mile.[93] MCI argues that the Commission prescribed reasonable dark fiber rates that were cost-based and provided a fair return.[94] Recognizing that Southwestern's rates are within-band and below-cap, MCI asserts that Southwestern is attempting to use the price cap rules to subvert the Commission's rate prescription in the *Dark Fiber Order*.

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[85] Commission Requirements for Cost Support Material to be Filed with 1993 Annual Access Tariffs, *Order*, 8 FCC Rcd 1936 (1993)(*1993 TRP Order*).

[86] *Id.* at 1938-39.

[87] Sprint Petition at 5-6.

[88] Ameritech Reply at 6-7.

[89] US West TRP EXG-1 form, Tariff F.C.C. No. 1, Transmittal No. 345, Apr. 2, 1993.

[90] AT&T Petition at App. F, (stating that the other BOCs have shown decreases of from $3.5 million (Pacific) to $6.0 million (BellSouth) with an average reduction of $3.57 million); *accord* MCI Petition at 19.

[91] US West Reply at 17; US West argues that the Commission has not found its methodology unreasonable in past years.

[92] The transition was complete as of the end of 1992 and full weight is now given to the DEM allocator. The DEM allocator equals the interstate minutes of holding time of originating and terminating local switching equipment divided by the total state and interstate minutes for local switching equipment.

[93] MCI Petition at 26-27.

[94] MCI Petition at 27-28, citing, Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 395, BellSouth Telephone Companies, Revisions to Tariff F.C.C. No. 4, Transmittal No. 354, Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68, Transmittal Nos. 2039, 2062, and 2094, US West Communications, Revisions to Tariff F.C.C. No. 1, Transmittal No. 127, CC Docket No. 88-136, *Memorandum Opinion And Order*, 6 FCC Rcd 4776 (1991)(*Dark Fiber Order*).

51. Wiltel argues that its monthly charges for dark fiber service will increase from $175,147.08 per month to $250,260 per month, an increase of over $900,000 per year. Wiltel contends that the rates are unreasonable in violation of Section 201(b) of the Communications Act.[95] Wiltel also alleges that the proposed increase will eradicate the proportional relationship between DS3 rates and dark fiber rates, which will constitute an unreasonable discrimination in violation of Section 202(a) of the Communications Act.[96]

52. Southwestern responds that its rates for dark fiber service are within-band and below-cap, and were filed pursuant to Section 61.49(b) of the Commission's Rules.[97] Southwestern further argues that, under Section 1.773(a)(1)(iv),[98] the rates are presumed to be *prima facie* lawful. Further, Southwestern contends that the parties have only marginally addressed one of the four elements necessary to overcome the presumption of lawfulness. Accordingly, Southwestern argues that the petitions of Wiltel and MCI should be dismissed.[99]

53. We have reviewed Southwestern Bell's transmittal concerning its dark fiber rates and all related pleadings. We conclude that the transmittal is not patently unlawful so as to warrant rejection. We also conclude that no question has been raised which warrants investigation at this time.

NYNEX's Gross Income Tax

54. AT&T asserts that NYNEX failed to include the proper amount of state gross income tax (GIT) in its exogenous cost calculation. AT&T argues that, as part of NYNEX's 1992 annual access filing, it included $6.75 million in its GIT exogenous cost reduction for a retroactive tax rate change, effective January 1, 1991. The exogenous cost reduction also included $1.818 million to reflect the effect of a six-month reduction in the GIT surcharge rate from 15 to 10 percent, effective January 1, 1992. On April 10, 1992, the GIT surcharge was raised back to 15 percent for the calendar year 1992. NYNEX reflected this change in an Errata to its 1992 annual filing by doubling the effect of the 15 percent surcharge rate on revenues for the second half of 1991 ($1.818 million) to approximate the effect of the increase for the full 1992 calendar year. This change to account for the higher level of the GIT surcharge, AT&T contends, resulted in a decrease of $3.635 million from the level of the GIT exogenous cost reduction shown in the April 2, 1992 annual filing. AT&T argues that NYNEX represented in its 1992 tariff support that, unless further changes were made to the GIT, NYNEX would reflect $3.635 million as an exogenous cost reduction and calculate the GIT rate surcharge using a 10 percent surcharge for the entire year. AT&T argues that the GIT surcharge rate has reverted to 10 percent. However, AT&T continues, NYNEX has only implemented an exogenous cost reduction of $1.818 million which is one half the correct amount to reflect the reduction in the GIT surcharge rate. AT&T further argues that NYNEX failed to justify its omission of the additional $1.818 million exogenous cost reduction resulting from the GIT surcharge change.[100]

55. NYNEX responds that, while AT&T is correct that NYNEX miscalculated the GIT exogenous cost reduction in the 1993 filing, AT&T's point is now moot. NYNEX states that the Governor of New York recently signed a bill reinstating the 15 percent surcharge, retroactive to the first of the year.[101]

56. The Common Carrier Bureau has reviewed NYNEX's transmittal and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

F. Calculation of the "g" Factor by Bell Atlantic and SNET

57. AT&T argues that both SNET and Bell Atlantic have improperly applied the Commission's prescribed price cap index formula in calculating the "g" factor in the PCI computation for the common line basket. AT&T contends that Bell Atlantic incorrectly used the fourth quarter 1992 line count instead of the count for the full calendar year 1992 base period in its g factor calculation. AT&T concludes that the correct calculation of the g factor would result in a common line basket PCI reduction of $5.45 million. AT&T repeats the same allegation for SNET, asserting that SNET used only its December 1992 line count. AT&T concludes that the correct calculations would reduce SNET's common line rates by $104,000.[102]

58. Bell Atlantic responds stating that in calculating its "g" factor, Bell Atlantic used the access lines reported in its ARMIS Report 43-01 for the fourth quarter of the base year, as it has done for all of its previous price cap filings. Bell Atlantic asserts that AT&T's approach would lead to inconsistent figures and result in an invalid "g" factor.[103]

59. SNET agrees that it has incorrectly calculated its "g" factor. However, it does not agree with AT&T that a determination of annual growth in minutes of use per access line must be based on a comparison of full 12-month periods. SNET argues that as long as the measurement point is consistent, the measured growth in minutes per access line should be the same, whether calculated on a December-to-December basis, or on a 12 month over 12 month basis. Finally, SNET asserts that a comparison of monthly average of line counts should be used to compute "g" in both the base year and the base year minus one.[104]

60. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes related to the calculation of "g" factors by Bell Atlantic and SNET is warranted. Therefore, we are suspending rates for one day, imposing an accounting order, and initiating an investigation. We designate issues for investigation in Section VI of this Order.

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95 Wiltel Petition at 3.
96 *Id.* at 3-4.
97 47 C.F.R. § 61.49(b).
98 47 C.F.R. § 1.773(a)(1)(iv).
99 Southwestern Reply at 31-35.
100 AT&T Petition at App. E.
101 NYNEX Reply at 5.
102 AT&T Reply, App. G.
103 Bell Atlantic Reply at 12.
104 SNET Reply at 10-11.

G. New Services

61. New services subject to price cap regulation must be included in the appropriate price cap basket beginning at the first annual price cap tariff filing following completion of the base year in which the new service is introduced.[105] The demand for the new service during the base year must be included in determining the weights used to calculate the Actual Price Index (API) for the appropriate basket.

62. Among other new services introduced in this year's annual access filings, LECs placed Line Information Database Service (LIDB) in the traffic sensitive basket. With the exception of one LEC, the per query charges (LIDB query and LIDB transport) are included in the local transport service category within that basket.[106] The only LEC not placing these charges in the local transport category is United, which placed them in the local switching category.

63. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes of those price cap companies that include LIDB charges as new services is warranted. Therefore, we are suspending rates of those price cap companies that include LIDB charges in their actual price index calculations for one day and initiating an investigation. We also impose an accounting order upon these companies. We designate issues for investigation in Section VI of this Order.

H. Exogenous Treatment of Long Term and Transitional Support Payments

64. Ad Hoc requests that the Commission investigate the exogenous treatment proposed by all price cap LECs to account for payments for long term support (LTS) and transitional support (TRS) payment.[107] Ad Hoc argues that the LECs' approach to these payments may fail to reflect the underlying cost trends and may produce disincentives to be more efficient.[108]

65. NECA argues that the LEC filings comply with the Commission rules for recovery of LTS and TRS.[109] NECA also argues that the 1992/1993 test period was unique in that the transition period for TRS ended and TRS receivers were required to begin contributing to LTS on April 1, 1993. Finally, NECA contends that the exogenous change is not the value of the 1993/1994 support amount, but the difference between the 1992/1993 amount and the 1993/1994 test-period amounts.[110]

66. We have examined the LEC calculations of exogenous cost change related to LTS and TRS support payments and all related pleadings. We conclude that no question has been raised which warrants investigation at this time.

I. Discount Plans Affecting DS3 Rates

67. MFS asks the Commission to suspend and investigate all discounted high capacity rates offered by the Bell Operating Companies and GTE. MFS argues that, while the rates are technically in compliance with the price cap rules the variability of the rates indicates that they are being set at predatory levels and may be subsidized by monopoly services. MFS asserts that, for example, Bell Atlantic proposes to offer volume and term discounts of up to 69 percent of its monthly tariffed rates, up from 57 percent in its 1992 annual access filing. Similarly, MFS contends, BellSouth proposed to raise its discounts from 50 percent to 73 percent; and GTE seeks to increase its discounts from 45 percent to 67 percent. MFS argues that neither the initial 1992 volume and term discounts nor the additional discounts now proposed appear to be based on differences in cost of providing the services, but in-stead appear to reflect below-cost pricing for selected services.[111]

68. The petitioned LECs generally argue that MFS makes only conclusory statements, providing no evidence or factual allegations of its claims. These companies also assert that their long term and volume discounted rates are below-cap, within-band rates, and thus enjoy a presumption of reasonableness in accordance with the price cap rules.[112]

69. Parties seeking suspension of within-band, within-cap filings, which are presumed lawful, must meet the substantial showing set forth in Section 1.773(a)(1)(iv) of the Rules.[113] The petitioners did not address the Section 1.773(a)(1)(iv) requirements. We have reviewed LECs' transmittals and all associated pleadings. We conclude that there is insufficient reason to reject or investigate these rates at this time.[114]

J. Elimination of Feature Groups by Bell Atlantic, BellSouth and NYNEX

70. Sprint argues that Bell Atlantic, BellSouth and NYNEX have revised their access tariffs to eliminate bundled feature groups. Sprint asserts that, the Commission's April 14, 1993 order on reconsideration in the ONA proceeding mandated continued availability of bundled feature

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[105] *See* 47 C.F.R. § 61.46(b).

[106] The LIDB query is the basic query charge. The LIDB transport charge, for connection between the STP port and the SCP database, is also charged on a per query basis. The STP port termination charge recovers the costs of the port on the signalling network side of the STP. The signalling link charge is a charge per line which recovers the costs of the transport facility itself.

[107] LTS is paid by non-pooling carriers to NECA so that NECA maintains a national-average carrier common line rate. TRS is paid by certain low-cost non-pooling carriers to certain higher-cost non-pooling carriers to ease the transition to a non-pooling environment for the latter carriers.

[108] Ad Hoc Petition at 2.

[109] *See also* Bell Atlantic Reply at 11; NYNEX Reply at 6; Southwestern Reply at 37-38.

[110] NECA Reply at n.4.

[111] MFS Petition at 4-5.

[112] Ameritech Reply at 8; *accord* Bell Atlantic Reply at 10; BellSouth Reply at 13-14; GTE Reply at 14; NYNEX Reply at 5-6; Pacific Reply at 3-4.

[113] 47 C.F.R. § 1.773(a)(1)(iv); *see also LEC Price Cap Order* 5 FCC Rcd at 6822 (para 293).

[114] We note, however, that we are already inquiring into whether we should promulgate guidelines requiring cost justification of any subset of LEC volume and term discounts. Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992). These rates will be subject to the outcome of that inquiry.

groups.[115] Accordingly, Sprint contends, these LECs should revise their proposed tariffs to reinstate all terms and conditions relating to the provision and use of bundled feature group arrangements.

71. As Sprint observes, the Commission has reinstated feature groups by its April 14 order. Subsequently, the carriers have complied with that Order. Accordingly, we dismiss this aspect of Sprint's petition as moot.

III. TIER 2 CARRIERS

A. Increases in Local Switching Rates for Certain Tier 2 Local Exchange Carriers

72. AT&T argues that the Traffic Sensitive rates filed by 23 LECS pursuant to Section 61.39 or Section 61.38 of the Commission's Rules[116] are excessive, resulting in aggregate rate increases of p $4,747,965.[117] AT&T contends that each of these LECS has filed local switching rate increases for 1993 that are more than 10 percent greater than their 1992 rates, with certain increases as high as 134.32 percent (Merchants and Farmers) and 139.13 percent (Bloomingdale). The average rate increase for these LECs, according to AT&T, is 38.91 percent, and the weighted average rate increase is 22.93 percent. AT&T argues that these rates appear on their face to be excessive when compared with overall industry trends.[118]

73. The LECs filing pursuant to Section 61.39 respond that Section 1.773 of the Commission's Rules[119] deems the rates *prima facie* lawful and not subject to suspension unless the petition shows that the cost and demand studies were not provided to an interested party upon reasonable request.[120] Elkhart further argues that suspension of the small company access tariffs would be contrary to the Commission's goal of rate neutrality. Elkhart contends that revisions suggested by AT&T would be based on a combination of historical and prospective data. Elkhart argues that since the principle of rate neutrality is based in the calculation of rates using historical data, the results would violate that principle.[121]

74. We have reviewed the LEC transmittals that were petitioned by AT&T and all associated pleadings. We conclude that the filings are not patently unlawful so as to warrant rejection. We also conclude that no question has been presented that warrants investigation at this time.

B. Citizens Increase of Rates Due to Operating Expenses

75. Citizens Utilities Telephone of Arizona filed rates based on prospective cost data pursuant to Section 61.38 of the Commission's rules.[122] AT&T argues that Citizens appears to have projected growth rates for total company operating expenses which far exceed Citizens' historical trends. Specifically, AT&T contends that Citizens has projected growth in certain expense categories from historical to the prospective period at rates between 10 and 55 percent. These growth rates, AT&T contends, are significantly higher than Citizens' projected overall 6.45 percent growth in central office equipment investment during the same period. Finally, AT&T asserts that nothing in Citizens' workpapers offers a satisfactory explanation or justification for these increases. AT&T asks that the Commission enter a one day suspension and investigate Citizens' rates.[123]

76. Citizens replies that AT&T provides no evidence that its expenses are unwarranted or that they do not serve the public interest. Citizens further argues that AT&T provides no evidence that current expenses are excessive, that the historical average is appropriate today, or that the historical ratio of expenses to investment is relevant for ratemaking purposes.[124]

77. We have reviewed Citizen's transmittal and all associated pleadings.[125] We conclude that no question has been presented that warrants investigation at this time.

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[115] Sprint Petition at 6, citing Amendments of Part 69 of the Commission's rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, *Memorandum Opinion and Order on Reconsideration*, FCC 93-190, released Apr. 14, 1993.

[116] 47 C.F.R. §§ 61.38 and 61.39.

[117] AT&T Petition at App. H; listing the following LECs: Ayershire, Bay Springs, Bloomindale, Bourbeuse, Coastal Utilities, C-R Telephone, East Ascension, El Paso, Elkhart, Fidelity, Granite State, Gridley, Hargray, Leaf River, Merchants and Farmer, Millington, Northwest, Odin, Pineland, Sierra, Southeast, United Telephone Association, and Warwick Valley.

[118] AT&T notes that it has requested and reviewed the cost support for these rates and concluded that the cost support does not demonstrate any justification for the rate increases.

[119] 47 C.F.R. § 1.773(a)(1)(iii).

[120] *See e.g.*, Coastal Utilities, *et al.* Reply at 2; GVNW Reply at 1-2; Elkhart *et al.* Reply at 1-2.

[121] Elkhart Reply at 7.

[122] 47 C.F.R. § 61.38.

[123] AT&T Petition at App. I.

[124] Citizens Reply at 2.

[125] *See also* Letter to the Secretary Supplementing Citizens' 1993 Annual Access Filing, June 7, 1993.

C. Demand Forecast of Anchorage for 800 Query Service

78. Anchorage filed rates based on prospective cost data pursuant to Section 61.38 of the Commission's rules.[126] AT&T argues that Anchorage has shown a test period demand amount of 19,299,100 queries for 800 query service. AT&T asserts that this amount appears to be incorrect and that Anchorage has understated its demand by using historical 1992 demand instead of forecasting demand. AT&T also argues that Anchorage has forecasted its total traffic sensitive minutes to increase at an annualized rate of 7.85 percent throughout the test period. AT&T contends that a proper calculation will result in a reduction of Anchorage's access charges for 800 query service of approximately $55,000.[127]

79. Anchorage agrees with AT&T that its projected demand for 800 query service should be increased by using a projected annualized growth rate of 7.85 percent. However, Anchorage also argues that its revenue requirement must also be increased to reflect additional costs from serving the higher demand.[128]

80. We conclude that AT&T has raised sufficient question as to the correctness of Anchorage's cost support to warrant investigation. We therefore suspend Anchorage's tariff for one day and incorporate the 800 services portion of Anchorage's transmittal into the Commission's current investigation in CC Docket No. 93-129.[129] We also impose an accounting order upon Anchorage.

D. Anchorage Traffic Sensitive Rates

81. GCI addresses several issues concerning Anchorage's traffic sensitive rates and asks that the Commission suspend and investigate the transmittal. First GCI contests Anchorage's directory assistance service charge. GCI argues that, when compared to Anchorage's revenue requirement filed with NECA for the NECA 1992 directory assistance rate, Anchorage's 1993 revenue requirement is 43 percent higher.[130] Concerning its directory assistance rates, Anchorage states that it will amend its rate to reflect errors alleged by GCI.[131]

82. Second, GCI states that Anchorage's cost study for this tariff includes tandem switching costs. GCI argues that Anchorage has never reflected tandem switching costs in its prior cost studies and includes no allocation to local service. GCI asks that Anchorage explain the investment, associated traffic studies underlying the allocation factors, and provide network diagrams to assist in an analysis of this new investment.[132] Anchorage asserts that its tandem equipment investment allocation factor is intended to reflect a portion of the switch it needs to terminate GCI's Feature Group B traffic and that this is the first time such allocation has been appropriate.[133]

83. GCI next argues that it is impossible to determine whether Anchorage's claimed investment in fiber optic and circuit equipment has been properly assigned.[134] Anchorage contends that all fiber optic costs are covered through a lease arrangement with Alascom, Inc. pursuant to an Alaska Public Utilities Commission order.[135]

84. GCI also argues that Anchorage's 800 database query charge improperly included local switching and local transport costs.[136] Anchorage asserts that its 800 database query rate is developed in accordance with Commission orders and rules.[137]

85. Lastly, GCI asserts that Anchorage offers 19.2 Kbps and 64 Kbps high capacity services which it has not included in its tariff.[138] Anchorage states that the 19.2 and 64 Kbps services received by GCI are multiplexed from Anchorage's tariffed 1.544 Mpbs, either by GCI or by its customers.[139]

86. We have reviewed Anchorage Transmittal No. 64, GCI's petition and related pleadings. We conclude that, except for the 800 service issue addressed in the previous section, no question has been presented that warrants investigation at this time.

E. ALLTEL Minutes of Use Forecast

87. ALLTEL filed prospective cost data pursuant to Section 61.38 of the Commission's rules.[140] AT&T states that ALLTEL has reduced its traffic sensitive minutes of use forecast from its baseline due to the anticipated closing of Chanute Air Force Base. AT&T argues that ALLTEL has not provided evidence that traffic will decline by the full 14.7 percent as projected. AT&T contends that it is more likely that air force base operations will be phased out gradually over time. AT&T further asserts that it is possible that the traffic will actually increase due to activities associated with the base's closing.[141]

88. ALLTEL responds that AT&T's arguments are speculative and are undermined by facts filed with its tariff. ALLTEL argues that it received confirmation from the Air Force that the final closing of the base will take place on September 30, 1993, concluding the phase-out of operations which began in January of 1993. ALLTEL contends that it did not reflect the phase-down in minutes of use until after the September 30th closing date. Finally ALLTEL argues that its forecast of demand impact is, therefore, conservative.[142]

89. We have reviewed ALLTEL's transmittal and all related pleadings. We conclude that there is nothing patently unlawful so as to warrant rejection, and that no question has been presented that warrants investigation at this time.

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126 47 C.F.R. § 61.38.
127 AT&T Petition at App. J.
128 Anchorage Reply at 5.
129 Bell Operating Companies' Tariff for the 800 Service Management System and 800 Data Base Access Tariffs, 8 FCC Rcd 3242 (Com. Car. Bur., Apr. 28, 1993).
130 GCI Petition at 3-4.
131 Anchorage Reply at 2.
132 GCI Petition at 4-5.
133 Anchorage Reply at 3.
134 GCI Petition at 5.
135 Anchorage Reply at 3-4.
136 GCI Petition at 5-6.
137 Anchorage Reply at 5-6.
138 GCI Petition at 6.
139 Anchorage Reply at 6.
140 47 C.F.R. § 61.38.
141 AT&T Petition at App. K.
142 ALLTEL Reply at 2-4.

F. Roseville Cash Working Capital

90. Roseville filed rates based on prospective cost data pursuant to Section 61.38 of the Commission's rules.[143] AT&T asserts that Roseville overstated its cash working capital (CWC) requirement by approximately $1.2 million.[144] Roseville's requirement amounts to 76 net days of working capital according to AT&T. AT&T asserts that the average number of days of 10 LECs similarly situated to Roseville is 20 days, ranging from 17 days to 39 days. AT&T therefore requests that the Commission direct Roseville to justify its use of an extraordinary number of days or to use no more than the average number of days of the comparable-sized LECs as a reasonable surrogate.[145]

91. Roseville responds that AT&T's computation is based on incorrect assumptions and that a corrected AT&T analysis yields 59 days of working capital requirement. Roseville states that its results are based on a study and are thus, more accurate than calculations using standard assumptions as permitted by the Commission's rules. Roseville further asserts that AT&T failed to demonstrate that Roseville's transmittal is *prima facie* unlawful and that the petition fails to raise significant questions of lawfulness.[146]

92. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes concerning Roseville's calculations related to its cash working capital is warranted. Therefore, we are suspending rates for one day, imposing an accounting order, and initiating an investigation. We designate issues for investigation in Section VI of this Order.

G. NECA's Traffic Sensitive Rate Calculations

93. AT&T and MCI filed petitions against the National Exchange Carrier Association's (NECA's) Traffic Sensitive rates. AT&T argues that the NECA rates appear to overstate the average schedule settlement projections for the test period.[147] AT&T asserts that there is a $62.7 million discrepancy between the forecasted average schedule settlement amounts for the tariff year and NECA's December 31, 1992 average schedule filing.[148] AT&T further contends that NECA has not included overall Traffic Sensitive rate reductions to account for overearnings in 1992, and alleges that NECA has overstated the amount of its "earnings erosion."[149]

94. MCI asserts that NECA has provided insufficient information to determine whether NECA used proper DEM factors. MCI argues that this may result in unwarranted Traffic Sensitive rate increases.[150] Both MCI and AT&T seek suspension and investigation of NECA's Traffic Sensitive rates.

95. NECA argues that it has correctly forecasted its average schedule company settlements. NECA contends that AT&T's analysis incorrectly applies an annual growth rate to baseline data and fails to include the impact of several average schedule formulas that are based on demand units other than minutes. NECA further argues that in its annual filing, prior year cost of service and test-period average schedule settlement projections use historical trends to estimate both anticipated changes to pooling data and the impact of the proposed schedule revisions. AT&T has, NECA contends, based its analysis on the projection of a single month's data to the test period.[151]

96. Concerning "earnings erosion" in the development of Traffic Sensitive rates, NECA contends that AT&T's and MCI's arguments fail to consider the impact of three important factors: (1) that NECA voluntarily reduced its current test-period Traffic Sensitive rates on February 1, 1993; (2) that the pool composition for the test period is significantly different from the 1992 pool composition; and (3) that the parties rely on preliminary data. NECA states that while it has made substantial improvement in reducing earnings erosion to the level displayed for 1991, and is continuing to do so, further progress will be difficult to accomplish due to the volatility in small company cost trends, combined with implementation of infrastructure enhancements.[152]

97. Finally, NECA responds to MCI's contention that a large part of the annualized Traffic Sensitive revenue requirement is attributed to the DEM transition. NECA contends that the growth rate of its Traffic Sensitive switched access revenue requirement due to the DEM transition is reasonable and consistent with industry trends. NECA argues that the annual growth in its Traffic Sensitive switched access pool revenue requirement is less than the projected growth attributable to NECA companies' DEM.[153]

98. We have examined the issues raised in the petitions regarding NECA's Traffic Sensitive rates and calculation, as well as the filing and supporting documentation. We conclude that an investigation is not warranted at this time.

IV. UNIVERSAL SERVICE FUND AND LIFELINE

99. On May 17, 1993, NECA filed tariff revisions to decrease its Universal Service Fund (USF) charge from $.4604 to $.4561, and to increase the Lifeline Assistance (LA) charge from $.0777 to $.0809.[154] The tariff is scheduled to become effective on July 1, 1993. Petitions to suspend and investigate NECA Transmittal No. 556 were filed by MCI and Sprint on June 1, 1993.[155]

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[143] 47 C.F.R. § 61.38.

[144] CWC is the amount of investor-supplied funds used to pay operating expenses that are incurred in providing service prior to the receipt of revenues. CWC is generally computed by determining the revenue lag.

[145] AT&T Petition at App. L.

[146] Roseville Reply at 2-6.

[147] AT&T Petition at 30-31.

[148] *Id.* at 31.

[149] "Earnings erosion" occurs as a result of NECA permitting carriers to true-up their settlement amounts with the pool for up to two years. Since these costs tend to rise, earnings are diminished or eroded over time. *Id.* at 33 and App. D-2; MCI Petition at 30-32.

[150] MCI Petition at 30-32.

[151] NECA Reply at 4-5.

[152] *Id.* at 7-10.

[153] *Id.* at 10-12.

[154] National Exchange Carrier Association, Tariff F.C.C. No. 5, Transmittal No. 556, filed May 17, 1993.

[155] Sprint asks that the NECA filing be suspended for one day and that the transmittal be incorporated into the Commission's current investigation of NECA USF/LA tariff provisions in CC Docket 93-123.

100. Sprint argues that the rates are based on revenue requirement estimates which are excessive and insufficiently documented.[156] Sprint asserts that NECA has failed to provide adequate justification for the increases in USF/LA revenue requirements: the difference between prior projections and actual assistance provided, or fund resizing; the "quarterly update and other adjustments;" and the estimated increase in administrative expenses.[157] MCI argues that the level of increase in the USF revenue requirement is unwarranted because the phase in of the USF is complete.[158]

101. NECA responds that neither MCI nor Sprint has raised sufficient questions of lawfulness to warrant investigation of Transmittal 556. NECA asserts that its resizing adjustments of USF and of LA are consistent with Commission rules. NECA also contends that it calculated its expenses in a reasonable manner and consistent with the Commission's rules.[159]

102. We conclude that sufficient question as to NECA's justification for its USF/LA rate changes have been raised to warrant investigation. We also find that these issues are sufficiently similar to those in our current investigation of NECA's USF/LA rate changes, that administrative convenience permits adding this transmittal to that investigation. We therefore suspend NECA's Transmittal 556 for one day and incorporate that transmittal into the Commission's current investigation of NECA USF/LA provision in CC Docket No. 93-123.[160] The accounting order imposed in CC Docket No. 93-123 also applies to this transmittal.

V. GENERAL SUPPORT FACILITIES (GSF) COSTS

103. On May 19, 1993, the Commission released an Order adopting rule modifications to correct the misallocation of GSF investment and related expenses among the Part 69 cost categories for LECs.[161] The Order directed LECS to file compliance tariffs, on not less than 14-days' notice, to be effective July 1, 1993.

104. These tariffs were filed June 17, 1993. Petitions, if any, will be due virtually at the same time this Order is released. Therefore, because of the limited time within which to conduct a necessary review of issues concerning the GSF filings and in an abundance of caution, we conclude that an investigation is warranted to determine whether these filings comply with the Commission's *GSF Order*. Accordingly, in this Order we suspend those tariffs filed pursuant to the *GSF Order* for one day and impose an accounting order. The issues are designated in Section VI of this Order.[162]

VI. ISSUES DESIGNATED FOR INVESTIGATION

105. We hereby designate the following issues for investigation:

1. Have the LECs borne their burden of demonstrating that implementing SFAS-106 results in an exogenous cost change for the TBO amounts under the Commission's price cap rules?

> We direct the LECs to provide evidence of and describe the ranges of data on the age of the workforce, the ages at which employees will retire, and the length of service of retirees, presented by their actuaries and used by the companies to compute OPEB amounts claimed in the annual access transmittals.
>
> We direct the LECs to provide pertinent sections of their employee handbooks, contracts with unions, and other items that include statements to the employees concerning the company's ability to modify its post-employment benefits package.

2. How should price cap LECs reflect amounts from prior year sharing or low-end adjustments in computing their rates of return for the current year's sharing and low-end adjustments to price cap indices?

3. Does US West's filing, claiming a change in a DEM allocator as exogenous, comply with Section 61.45(d)?

4. Should Bell Atlantic be permitted to exclude end user charge revenues from the common line basket for the purposes of computing sharing obligations?

5. Have Bell Atlantic and SNET correctly calculated the "g" factor? Parties addressing this issue should discuss whether the fact that revenues in the PCI calculation are viewed over an entire year requires that other factors in the PCI formula be treated consistently. Responsive parties should also address whether an average line count should apply to both the base year, and the base year minus one.

6. Have the LECs properly reallocated GSF costs in accordance with the *GSF Order?*

7. To what category or categories should the LIDB per query charges be assigned?

8. Has Roseville met its burden of justifying its cash working capital requirement and underlying study in support of its annual access rates?

106. This investigation will be conducted as a notice and comment proceeding pursuant to Section 1.411 of the Commissions Rules.[163] CC Docket No. 93 - 193 has been assigned for this purpose. The carriers listed in Appendix B to this Order are designated as parties. These parties shall file their direct cases no later than July 27, 1993. The direct cases must present the parties' positions with respect

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156 Sprint Petition at 1.
157 *Id.* at 1-3.
158 *Id.*
159 NECA Reply (Tr. 556) at 3-7.
160 National Exchange Carrier Association, Revisions to Tariff F.C.C. NO. 5, Universal Service Fund and Lifeline Assistance Rates, Order, 8 FCC Rcd 922 (Com. Car. Bur. 1993); Order Designating Issues for Investigation, 8 FCC Rcd 2930 (Com. Car. Bur. 1993).

161 Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, FCC 93-238, released May 19, 1993 (*GSF Order*).
162 The analysis of price cap indices in Appendix C does not reflect the GSF reallocations. An analysis reflecting the GSF reallocation is available in hard copy or computer disk from the Commission's commercial contractor, International Transcription Services, Room 246, 1919 M Street, N.W., Washington, D.C. 20554.
163 47 C.F.R. § 1.411.

to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than August 10, 1993, and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." Parties may each file a "rebuttal" to oppositions or comments no later than August 24, 1993.

107. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, ITS, Room 246, 1919 M St., N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Such comments must specify the docket number of this investigation.

108. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission will take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the Order.

109. *Ex parte* contacts (*i.e.*, written or oral communications which address the procedural or substantive merits of the proceeding and which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order is released and after the final Order itself is issued. Written *ex parte* contacts must be filed on the day submitted with the Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commissions rules.[164]

110. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure or other record retention requirements as contemplated under the statute.[165]

VII. ORDERING CLAUSES

111. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the rates specified in Sections II.A., II.B.1., II.B.4., II.C., II.F., II.G., III.C., III.F., IV, and V, *supra,* ARE SUSPENDED for one day from the current effective date and an investigation of those rates is instituted. The local exchange carriers affected SHALL FILE a supplement reflecting this suspension no later than June 29, 1993, to be effective July 1, 1993.

112. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 204(a), the local exchange carriers listed in Appendix B SHALL RESPOND to the issues designated in Section VI, *supra,* no later than July 27, 1993. Interested parties may file pleadings responding to the direct case no later than August 10, 1993, and the local exchange carriers may file a rebuttal no later than August 24, 1993.

113. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers that filed 1993 annual access rates specified in Sections II.A., II.B.1., II.B.4., II.C., II.F., II.G., III.C., III.F., IV, and V, *supra,* SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

114. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed by the Anchorage Telephone Utility, and any other local exchange carrier that included new or changed 800 service rates in its 1993 annual access filings, are subject to the investigation of 800 service rates instituted in CC Docket No. 93-129. Anchorage Telephone Utility SHALL FILE a supplement reflecting this suspension no later than June 29, 1993, to be effective July 1, 1993.

115. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the Anchorage Telephone Utility, and any other local exchange carrier that included new or changed 800 service rates in tvs 1993 annual access filings, SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject to the investigation in CC Docket No. 93-129.

116. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed by the National Exchange Carrier Association, Transmittal No. 556, are subject to the investigation Universal Service Fund and Lifeline Assistance rates instituted in CC Docket No. 93-123. The National Exchange Carrier Association SHALL FILE a supplement reflecting this suspension no later than June 29, 1993, to be effective July 1, 1993.

117. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the National Exchange Carrier Association SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject to the investigation in CC Docket No. 93-123.

118. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers, as listed in Appendix B, that filed 1993 annual access rates SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

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164 *See* 47 C.F.R. § 1.1200 *et seq.*

165 *See* 44 U.S.C. § 3502(4)(A).

119. IT IS FURTHER ORDERED that the petitions to suspend and investigate or to reject the Annual 1993 Access Tariff filings ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

Petitions

The following parties filed petitions against the 1993 Annual Access Tariff Filings. The names in parentheses are used for these parties throughout the Order.

Ad Hoc Telecommunications Users Committee (Ad Hoc)

American Telephone and Telegraph Company (AT&T)

General Communication, Inc. (GCI)

MCI Telecommunications Corporation (MCI)

Metropolitan Fiber Systems, Inc. (MFS)

Sprint Communications Company Limited Partnership (Sprint)

Williams Telecommunication Group, Inc. (Wiltel)

Replies

The following parties filed replies to the petitions:

ALLTEL Telephone System (ALLTEL) Anchorage Telephone Utility (Anchorage) Bay Springs Telephone Company, Inc. (Bay Springs)‡

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Telecommunications, Inc. (BellSouth)

Centel Telephone Companies (Centel)

Chicamauga Telephone Corporation (Chicamauga)

Chillicothe Telephone Company (Chillicothe)

Cincinnati Bell Telephone Company (Cincinnati Bell)

Citizens Telephone Companies (Citizens)

Coastal Utilities, Inc. (Coastal)†

Elkhart Telephone Company (Elkhart)‡

GTE Telephone Operating Companies and GTE System Telephone

Companies (GTE)

GVNW, Inc./Management (GVNW)

Hargray Telephone Company, Inc.†

Lincoln Telephone Company (Lincoln)

Millington Telephone Company, Inc.†

National Exchange Carrier Association (NECA)

NYNEX Telephone Companies (NYNEX)

Pacific Bell (Pacific)

Pineland Telephone Cooperative, Inc.†

Rochester Telephone Corporation (Rochester)

Roseville Telephone Company (Roseville)

Southeast Telephone Company of Wisconsin, Inc.†

Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (Southwestern)

United Telephone Association, Inc.‡

US West Communications, Inc. (US West)

†Filed replies jointly (Coastal et. al.)

‡Filed replies jointly (Elkhart et. al.)

APPENDIX B

List of Parties to Investigation

Ameritech Operating Companies

Anchorage Telephone Utility

Bell Atlantic Telephone Companies

BellSouth Telecommunications, Inc.

Centel Telephone Companies

GTE Telephone Operating Companies

GTE System Telephone Companies

Lincoln Telephone Company

Nevada Bell

NYNEX Telephone Companies

Pacific Bell

Rochester Telephone Corporation

Roseville Telephone Company

Southern New England Telephone Company

United Telephone System

US West Communications, Inc.

APPENDIX C

Analysis of Price Cap Indexes

These charts show the indexes in the April 2, 1993 filings. Charts that show revisions, including the effects of re-allocating General Support Facility costs, are available in hardcopy or computer format from the Commission's commercial contractor, International Transcription Service, 1919 M Street, N.W., or the Common Carrier Bureau, Tariff Division.

Filing Entity: AMTR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$6,801			
5	DEM	($3,757)			
6	LTS/TRS	($84,073)			
7	ISW	($237)			
8	RDA	($6,180)			
9	EDT	$1,884			
10	ITC	$380			
11	REMOVAL SHARING/LOW END ADJ	$18,490			
12	REVISION SHARING/LOW END ADJ	($1,324)			
13	SHARING/LOW END ADJ	($14,313)			
14	OTHER	$4,099			
15	TOTAL OF INDIVIDUALS	($67,451)			
16	TOTAL EXOGENOUS	($67,451)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00597	0.00597	-0.00000	*
18	Orig Prem CCL Rate	0.00597	0.00597	-0.00000	*
19	g	0.03962			
20	Proposed PCI	83.05	83.05	-0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.31	98.31	0.000	*
23	SBI: Upper Limit	100.5075	100.5075	0.000	*
24	SBI: Lower Limit	90.94	90.94	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	90.26	90.26	0.000	*
28	SBI: Upper Limit	95.59	95.59	0.000	*
29	SBI: Lower Limit	88.48	88.48	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	91.45	91.45	0.000	*
33	SBI: Upper Limit	95.51	95.51	0.000	*
34	SBI: Lower Limit	88.41	88.41	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	104.44	104.44	0.000	*
39	SBI: Lower Limit	94.49	94.49	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS AFI	93.13	93.13	0.000	*
43	TS PCI	94.98	94.98	0.000	*
44	LEC AFI Above PCI?				LOW
45	FCC AFI Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	102.96	102.96	0.000	*
47	SBI: Upper Limit	108.15	108.15	0.000	*
48	SBI: Lower Limit	97.85	97.85	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	96.75	96.75	0.000	*
52	SBI: Upper Limit	101.63	101.63	0.000	*
53	SBI: Lower Limit	91.95	91.95	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index				*
57	Sub-Index Up Lim				*
58	Sub-Index Low Lim	84.86	84.86	0.000	*
59	LEC Sub-Ind Out?	89.15	89.15	0.000	*
60	FCC Sub-Ind Out?	80.66	80.66	0.000	*
	DS3				
61	Prop Sub-Index				*
62	Sub-Index Up Lim				*
63	Sub-Index Low Lim	86.42	86.42	0.000	*
64	LEC Sub-Ind Out?	90.78	90.78	0.000	*
65	FCC Sub-Ind Out?	82.13	82.13	0.000	*
	Total HiCap				
66	Proposed SBI				*
67	SBI: Upper Limit				*
68	SBI: Lower Limit	86.77	86.77	0.000	*
69	LEC SBI Out?	91.14	91.14	0.000	*
70	FCC SBI Out?	82.46	82.46	0.000	*
	Wideband				
71	Proposed SBI				*
72	SBI: Upper Limit				*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?	0.00	NONE	0.000	*
75	FCC SBI Out Bounds?	0.00	NONE	0.000	*
	Total Special Access				
76	Special AFI				*
77	Special PCI				*
78	LEC AFI Above PCI?	93.58	93.58	0.000	LOW
79	FCC AFI Above PCI?	98.79	98.79	0.000	LOW
	INTEREXCHANGE				
80	Interexchange AFI				*
81	Interexchange PCI				*
82	LEC AFI Above PCI?	82.51	82.51	0.000	LOW
83	FCC AFI Above PCI?	96.29	96.29	0.000	LOW

Filing Entity: BATR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($2,181)			
5	DEM	($3,496)			
6	LTS/TRS	($65,499)			
7	ISW	($601)			
8	RDA	$0			
9	EDT	$3,442			
10	ITC	$3,637			
11	REMOVAL SHARING/LOW END ADJ	$22,197			
12	REVISION SHARING/LOW END ADJ	$6,284			
13	SHARING/LOW END ADJ	($8,309)			
14	OTHER	$67,583			
15	TOTAL OF INDIVIDUALS	$23,055			
16	TOTAL EXOGENOUS	$23,055			
	COMMON LINE				
17	Term Prem CCL Rate	0.00680	0.00717	−0.00037	LOW
18	Orig Prem CCL Rate	0.00680	0.00717	−0.00037	LOW
19	g	0.02980			
20	Proposed PCI	82.81	82.81	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	105.13	105.13	0.000	*
23	SBI: Upper Limit	112.0277	112.0278	−0.000	*
24	SBI: Lower Limit	101.36	101.36	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	86.89	86.89	0.000	*
28	SBI: Upper Limit	93.93	93.93	−0.000	*
29	SBI: Lower Limit	84.99	84.99	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	102.70	102.70	0.000	*
33	SBI: Upper Limit	110.89	110.89	−0.000	*
34	SBI: Lower Limit	100.32	100.32	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	94.72	94.72	0.000	*
38	SBI: Upper Limit	102.28	102.28	−0.000	*
39	SBI: Lower Limit	92.54	92.54	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	94.90	94.90	0.000	*
43	TS PCI	97.12	97.12	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	107.88	107.88	−0.000	*
47	SBI: Upper Limit	109.59	109.59	0.000	*
48	SBI: Lower Limit	99.15	99.15	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	104.20	104.20	−0.000	*
52	SBI: Upper Limit	113.03	113.03	0.000	*
53	SBI: Lower Limit	102.26	102.26	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	86.30	86.30	0.000	*
57	Sub−Index Up Lim	94.84	94.84	−0.000	*
58	Sub−Index Low Lim	85.81	85.81	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	81.83	81.83	0.000	*
62	Sub−Index Up Lim	89.75	89.75	0.000	*
63	Sub−Index Low Lim	81.20	81.20	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	86.81	86.81	0.000	*
67	SBI: Upper Limit	97.09	97.09	0.000	*
68	SBI: Lower Limit	87.84	87.84	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	113.74	113.74	0.000	*
72	SBI: Upper Limit	114.01	114.01	−0.000	*
73	SBI: Lower Limit	103.15	103.15	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	96.38	96.38	−0.000	*
77	Special PCI	96.78	96.78	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	97.49	97.49	−0.000	*
81	Interexchange PCI	98.48	98.48	−0.000	*
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				LOW

Filing Entity: BSTR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($7,808)			
5	DEM	($6,095)			
6	LTS/TRS	$51,724			
7	ISW	($142)			
8	RDA	$0			
9	EDT	$5,925			
10	ITC	$5,990			
11	REMOVAL SHARING/LOW END ADJ	$24,036			
12	REVISION SHARING/LOW END ADJ	$8,780			
13	SHARING/LOW END ADJ	($11,606)			
14	OTHER	$2,138			
15	TOTAL OF INDIVIDUALS	$73,113			
16	TOTAL EXOGENOUS	$73,113			
	COMMON LINE				
17	Term Prem CCL Rate	0.01365	0.01365	-0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.02987			
20	Proposed PCI	94.61	94.61	-0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	107.80	107.80	-0.000	*
23	SBI: Upper Limit	108.0281	108.0280	0.000	*
24	SBI: Lower Limit	97.74	97.74	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	80.61	80.61	-0.000	*
28	SBI: Upper Limit	89.09	89.09	0.000	*
29	SBI: Lower Limit	80.61	80.61	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	109.93	109.93	-0.000	*
33	SBI: Upper Limit	110.19	110.19	0.000	*
34	SBI: Lower Limit	99.69	99.69	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	93.22	93.22	0.000	*
38	SBI: Upper Limit	98.11	98.11	0.000	*
39	SBI: Lower Limit	88.77	88.77	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	93.61	93.61	-0.000	*
43	TS PCI	93.64	93.64	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	103.45	103.45	-0.000	*
47	SBI: Upper Limit	110.43	110.43	-0.000	*
48	SBI: Lower Limit	99.91	99.91	-0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	108.04	108.04	0.000	*
52	SBI: Upper Limit	112.32	112.32	-0.000	*
53	SBI: Lower Limit	101.62	101.62	-0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	92.71	92.71	0.000	*
57	Sub-Index Up Lim	98.49	98.49	-0.000	*
58	Sub-Index Low Lim	89.11	89.11	-0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	96.35	96.35	0.000	*
62	Sub-Index Up Lim	102.14	102.14	-0.000	*
63	Sub-Index Low Lim	92.41	92.41	-0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	92.18	92.18	0.000	*
67	SBI: Upper Limit	97.83	97.83	-0.000	*
68	SBI: Lower Limit	88.51	88.51	-0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	97.08	97.08	-0.000	*
77	Special PCI	99.76	99.76	-0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	96.43	96.43	0.000	*
81	Interexchange PCI	98.52	98.52	0.000	*
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				LOW

Filing Entity: NXTR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($10,831)			
5	DEM	($4,502)			
6	LTS/TRS	($1,615)			
7	ISW	($330)			
8	RDA	$0			
9	EDT	$5,124			
10	ITC	$2,734			
11	REMOVAL SHARING/LOW END ADJ	($70,678)			
12	REVISION SHARING/LOW END ADJ	($10,974)			
13	SHARING/LOW END ADJ	($1,712)			
14	OTHER	$6,165			
15	TOTAL OF INDIVIDUALS	($83,719)			
16	TOTAL EXOGENOUS	($83,719)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00658	0.00658	−0.00002	•
18	Orig Prem CCL Rate	0.00658	0.00658	−0.00002	•
19	g	0.04454			
20	Proposed PCI	90.45	90.45	−0.000	•
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	108.94	108.94	−0.000	•
23	SBI: Upper Limit	107.5543	107.5538	0.001	•
24	SBI: Lower Limit	97.31	97.31	0.000	•
25	LEC SBI Out Bounds?				•
26	FCC SBI Out Bounds?				•
	Local Transport				
27	Proposed SBI	82.73	82.73	−0.000	•
28	SBI: Upper Limit	90.10	90.10	0.000	•
29	SBI: Lower Limit	81.52	81.52	0.000	•
30	LEC SBI Out Bounds?				•
31	FCC SBI Out Bounds?				•
	Information				
32	Proposed SBI	92.51	92.51	−0.000	•
33	SBI: Upper Limit	93.99	93.99	0.000	•
34	SBI: Lower Limit	85.04	85.04	0.000	•
35	LEC SBI Out Bounds?				•
36	FCC SBI Out Bounds?				•
	800 Data Base				
37	Proposed SBI	100.09	100.00	0.090	HIGH
38	SBI: Upper Limit	101.70	101.70	0.001	•
39	SBI: Lower Limit	92.01	92.01	0.000	•
40	LEC SBI Out Bounds?				•
41	FCC SBI Out Bounds?				•
	Total Traffic Sensitive				
42	TS API	98.40	98.40	0.001	•
43	TS PCI	98.40	98.40	0.000	•
44	LEC API Above PCI?				•
45	FCC API Above PCI?				•

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	101.07	101.07	0.000	•
47	SBI: Upper Limit	103.31	103.31	−0.000	•
48	SBI: Lower Limit	93.47	93.47	−0.000	•
49	LEC SBI Out Bounds?				•
50	FCC SBI Out Bounds?				•
	Audio & Video				
51	Proposed SBI	104.52	104.52	−0.000	•
52	SBI: Upper Limit	104.65	104.65	−0.000	•
53	SBI: Lower Limit	94.68	94.68	−0.000	•
54	LEC SBI Out Bounds?				•
55	FCC SBI Out Bounds?				•
	HiCap				
	DS1				
56	Prop Sub−Index	83.82	83.82	0.000	•
57	Sub−Index Up Lim	90.11	90.11	−0.000	•
58	Sub−Index Low Lim	81.53	81.53	−0.000	•
59	LEC Sub−Ind Out?				•
60	FCC Sub−Ind Out?				•
	DS3				
61	Prop Sub−Index	85.01	85.01	−0.000	•
62	Sub−Index Up Lim	92.62	92.62	−0.000	•
63	Sub−Index Low Lim	83.80	83.80	−0.000	•
64	LEC Sub−Ind Out?				•
65	FCC Sub−Ind Out?				•
	Total HiCap				
66	Proposed SBI	87.76	87.76	−0.000	•
67	SBI: Upper Limit	93.32	93.32	−0.000	•
68	SBI: Lower Limit	84.43	84.43	−0.000	•
69	LEC SBI Out?				•
70	FCC SBI Out?				•
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	•
72	SBI: Upper Limit	0.00	NONE	0.000	•
73	SBI: Lower Limit	0.00	NONE	0.000	•
74	LEC SBI Out Bounds?				•
75	FCC SBI Out Bounds?				•
	Total Special Access				
76	Special API	93.37	93.37	−0.000	•
77	Special PCI	93.37	93.37	−0.000	•
78	LEC API Above PCI?				•
79	FCC API Above PCI?				•
	INTEREXCHANGE				
80	Interexchange API	96.25	96.25	0.000	•
81	Interexchange PCI	96.25	96.25	−0.000	•
82	LEC API Above PCI?				•
83	FCC API Above PCI?				•

Filing Entity: PACIFIC BELL

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$72			
5	DEM	($3,403)			
6	LTS/TRS	($5,691)			
7	ISW	$0			
8	RDA	$0			
9	EDT	$598			
10	ITC	$2,450			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	($3,641)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($9,617)			
16	TOTAL EXOGENOUS	($9,617)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00410	0.00413	−0.00003	*
18	Orig Prem CCL Rate	0.00410	0.00413	−0.00003	*
19	g	0.07000			
20	Proposed PCI	83.54	83.54	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	102.86	102.86	−0.000	*
23	SBI: Upper Limit	108.7190	108.7190	0.000	*
24	SBI: Lower Limit	96.56	96.56	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	82.75	82.75	−0.000	*
28	SBI: Upper Limit	88.78	88.77	0.000	*
29	SBI: Lower Limit	80.32	80.32	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.03	98.03	−0.000	*
33	SBI: Upper Limit	98.03	98.03	−0.000	*
34	SBI: Lower Limit	88.69	88.69	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	91.42	91.42	0.000	*
38	SBI: Upper Limit	94.93	94.93	−0.000	*
39	SBI: Lower Limit	85.89	85.89	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	93.55	93.55	−0.000	*
43	TS PCI	93.60	93.60	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	102.46	102.46	0.000	*
47	SBI: Upper Limit	107.07	107.07	−0.000	*
48	SBI: Lower Limit	98.88	98.88	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.11	98.11	0.000	*
52	SBI: Upper Limit	102.52	102.52	−0.000	*
53	SBI: Lower Limit	92.76	92.76	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	90.17	90.17	0.000	*
57	Sub−Index Up Lim	95.58	95.58	−0.000	*
58	Sub−Index Low Lim	86.48	86.48	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	88.64	88.64	−0.000	*
62	Sub−Index Up Lim	95.98	95.98	−0.000	*
63	Sub−Index Low Lim	86.84	86.84	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	91.24	91.24	0.000	*
67	SBI: Upper Limit	96.73	96.73	−0.000	*
68	SBI: Lower Limit	87.52	87.52	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	95.37	95.37	−0.000	*
77	Special PCI	96.36	96.36	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	98.72	98.72	0.000	*
81	Interexchange PCI	99.39	99.39	−0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: PTNV

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($1,328)			
5	DEM	($174)			
6	LTS/TRS	$963			
7	ISW	$0			
8	RDA	$0			
9	EDT	$3			
10	ITC	$192			
11	REMOVAL SHARING/LOW END ADJ	$308			
12	REVISION SHARING/LOW END ADJ	($201)			
13	SHARING/LOW END ADJ	($1,966)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($2,213)			
16	TOTAL EXOGENOUS	($2,235)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00520	0.00520	0.00000	*
18	Orig Prem CCL Rate	0.00520	0.00520	0.00000	*
19	g	0.02300			
20	Proposed PCI	90.82	90.82	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	91.93	91.93	0.000	*
23	SBI: Upper Limit	95.55	95.55	0.000	*
24	SBI: Lower Limit	86.45	86.45	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	85.60	85.60	0.000	*
28	SBI: Upper Limit	92.31	92.31	−0.000	*
29	SBI: Lower Limit	83.51	83.51	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	95.82	95.82	0.000	*
33	SBI: Upper Limit	96.42	96.42	0.000	*
34	SBI: Lower Limit	87.23	87.23	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	99.14	99.14	0.000	*
38	SBI: Upper Limit	99.16	99.16	−0.000	*
39	SBI: Lower Limit	89.71	89.71	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	90.36	90.36	−0.000	*
43	TS PCI	90.36	90.36	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	90.46	90.46	0.000	*
47	SBI: Upper Limit	90.49	90.49	0.000	*
48	SBI: Lower Limit	81.87	81.87	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.84	102.84	−0.000	*
52	SBI: Upper Limit	102.93	102.93	0.000	*
53	SBI: Lower Limit	93.13	93.13	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	105.67	105.67	0.000	*
57	Sub−Index Up Lim	110.19	110.19	0.000	*
58	Sub−Index Low Lim	99.70	99.70	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim		NONE	0.000	*
63	Sub−Index Low Lim		NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	101.66	101.66	0.000	*
67	SBI: Upper Limit	108.68	108.68	0.000	*
68	SBI: Lower Limit	98.33	98.33	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit		NONE	0.000	*
73	SBI: Lower Limit		NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	96.42	96.42	0.000	*
77	Special PCI	96.42	96.42	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	90.94	90.94	−0.000	*
81	Interexchange PCI	90.94	90.94	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: SWTR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($1,718)			
5	DEM	($3,736)			
6	LTS/TRS	($7,462)			
7	ISW	($681)			
8	RDA	$0			
9	EDT	$3,867			
10	ITC	$3,932			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$32,644			
15	TOTAL OF INDIVIDUALS	$26,846			
16	TOTAL EXOGENOUS	$59,304			
	COMMON LINE				
17	Term Prem CCL Rate	0.00758	0.00758	−0.00000	*
18	Orig Prem CCL Rate	0.00758	0.00758	−0.00000	*
19	g	0.02906			
20	Proposed PCI	87.03	87.03	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	108.67	108.67	0.000	*
23	SBI: Upper Limit	108.6953	108.6952	0.000	*
24	SBI: Lower Limit	98.34	98.34	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	89.62	89.62	−0.000	*
28	SBI: Upper Limit	97.04	97.04	0.000	*
29	SBI: Lower Limit	87.80	87.80	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.06	98.06	0.000	*
33	SBI: Upper Limit	108.32	108.32	0.000	*
34	SBI: Lower Limit	98.01	98.01	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	108.42	108.42	0.000	*
39	SBI: Lower Limit	98.10	98.10	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	97.95	97.95	0.000	*
43	TS PCI	97.95	97.95	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	113.82	113.82	0.000	*
47	SBI: Upper Limit	114.24	114.24	0.000	*
48	SBI: Lower Limit	103.36	103.36	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	112.55	112.55	0.000	*
52	SBI: Upper Limit	114.28	114.28	−0.000	*
53	SBI: Lower Limit	103.40	103.40	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	93.66	93.66	−0.000	*
57	Sub−Index Up Lim	100.93	100.93	0.000	*
58	Sub−Index Low Lim	91.31	91.31	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	94.28	94.28	0.000	*
62	Sub−Index Up Lim	101.91	101.91	−0.000	*
63	Sub−Index Low Lim	92.20	92.20	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	95.54	95.54	−0.000	*
67	SBI: Upper Limit	101.41	101.41	0.000	*
68	SBI: Lower Limit	91.75	91.75	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	101.44	101.44	0.000	*
77	Special PCI	101.44	101.44	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	107.97	107.97	−0.000	*
81	Interexchange PCI	108.03	108.03	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: USTR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($22,094)			
5	DEM	($753)			
6	LTS/TRS	($1,502)			
7	ISW	$0			
8	RDA	$0			
9	EDT	($2,221)			
10	ITC	$1,000			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($5,824)			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$46,791			
15	TOTAL OF INDIVIDUALS	$16,196			
16	TOTAL EXOGENOUS	$16,189			
	COMMON LINE				
17	Term From CCL Rate	0.00415	0.00465	−0.00049	LOW
18	Orig From CCL Rate	0.00415	0.00465	−0.00049	LOW
19	g	0.04429			
20	Proposed PCI	78.40	78.40	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	102.80	102.80	−0.000	*
23	SBI: Upper Limit	110.2140	110.2139	0.000	*
24	SBI: Lower Limit	99.72	99.72	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	99.15	99.15	0.000	*
28	SBI: Upper Limit	95.14	95.14	−0.000	*
29	SBI: Lower Limit	86.06	86.06	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	79.89	79.89	0.000	*
33	SBI: Upper Limit	85.80	85.80	−0.000	*
34	SBI: Lower Limit	77.63	77.63	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	105.47	105.47	0.000	*
39	SBI: Lower Limit	95.42	95.42	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	93.96	93.96	0.000	*
43	TS PCI	96.10	96.10	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	98.62	98.62	−0.000	*
47	SBI: Upper Limit	107.18	107.18	0.000	*
48	SBI: Lower Limit	96.97	96.97	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	93.44	93.44	0.000	*
52	SBI: Upper Limit	98.54	98.54	0.000	*
53	SBI: Lower Limit	89.16	89.16	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	94.36	94.36	0.000	*
57	Sub−Index Up Lim	101.95	101.95	0.000	*
58	Sub−Index Low Lim	92.24	92.24	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	100.39	100.39	−0.000	*
62	Sub−Index Up Lim	107.32	107.32	0.000	*
63	Sub−Index Low Lim	97.10	97.10	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	98.16	98.16	−0.000	*
67	SBI: Upper Limit	104.91	104.91	0.000	*
68	SBI: Lower Limit	94.92	94.92	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	97.05	97.05	0.000	*
77	Special PCI	99.17	99.17	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	93.11	93.11	0.002	*
81	Interexchange PCI	93.70	93.70	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: Central Telephone Company of Texas

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($374)			
5	DEM	($135)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$71			
10	ITC	$78			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($360)			
16	TOTAL EXOGENOUS	($360)			
	COMMON LINE				
17	Term Prem CCL Rate	0.01518	0.01518	0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.04121			
20	Proposed PCI	95.63	95.63	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.41	97.41	0.000	*
23	SBI: Upper Limit	102.2841	102.2841	−0.000	*
24	SBI: Lower Limit	92.54	92.54	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	97.41	97.41	0.000	*
28	SBI: Upper Limit	102.28	102.28	−0.000	*
29	SBI: Lower Limit	92.54	92.54	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.41	97.41	0.000	*
33	SBI: Upper Limit	102.28	102.28	−0.000	*
34	SBI: Lower Limit	92.54	92.54	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	102.28	102.28	−0.000	*
39	SBI: Lower Limit	92.54	92.54	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	97.41	97.41	0.000	*
43	TS PCI	97.41	97.41	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	100.50	100.50	−0.000	*
47	SBI: Upper Limit	105.52	105.52	−0.000	*
48	SBI: Lower Limit	95.47	95.47	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	100.11	100.11	0.000	*
52	SBI: Upper Limit	105.52	105.52	−0.000	*
53	SBI: Lower Limit	95.47	95.47	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	100.43	100.43	0.000	*
57	Sub−Index Up Lim	105.52	105.52	−0.000	*
58	Sub−Index Low Lim	95.47	95.47	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	100.45	100.45	0.000	*
67	SBI: Upper Limit	105.52	105.52	−0.000	*
68	SBI: Lower Limit	95.47	95.47	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	100.47	100.47	0.000	*
77	Special PCI	100.49	100.49	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02834			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($522)			
5	DEM	($109)			
6	LTS/TRS	($250)			
7	ISW	$0			
8	RDA	$0			
9	EDT	($19)			
10	ITC	$76			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($823)			
16	TOTAL EXOGENOUS	($823)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00930	0.00930	-0.00000	*
18	Orig Prem CCL Rate	0.00930	0.00930	-0.00000	*
19	g	0.03369			
20	Proposed PCI	93.89	93.89	-0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.86	97.86	0.000	*
23	SBI: Upper Limit	102.7501	102.7501	-0.000	*
24	SBI: Lower Limit	92.96	92.96	-0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	97.86	97.86	-0.000	*
28	SBI: Upper Limit	102.75	102.75	-0.000	*
29	SBI: Lower Limit	92.96	92.96	-0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.86	97.86	0.000	*
33	SBI: Upper Limit	102.75	102.75	-0.000	*
34	SBI: Lower Limit	92.96	92.96	-0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	102.75	102.75	-0.000	*
39	SBI: Lower Limit	92.96	92.96	-0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	97.86	97.86	-0.000	*
43	TS PCI	97.86	97.86	-0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	103.60	103.60	-0.000	*
47	SBI: Upper Limit	103.74	103.74	-0.000	*
48	SBI: Lower Limit	93.86	93.86	-0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.78	98.78	0.000	*
52	SBI: Upper Limit	103.74	103.74	-0.000	*
53	SBI: Lower Limit	93.86	93.86	-0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	94.11	94.11	0.000	*
57	Sub-Index Up Lim	103.74	103.74	-0.000	*
58	Sub-Index Low Lim	93.86	93.86	-0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	93.92	93.92	-0.000	*
62	Sub-Index Up Lim	103.74	103.74	-0.000	*
63	Sub-Index Low Lim	93.86	93.86	-0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	94.14	94.14	0.000	*
67	SBI: Upper Limit	103.74	103.74	-0.000	*
68	SBI: Lower Limit	93.86	93.86	-0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	98.28	98.28	0.000	*
77	Special PCI	98.80	98.80	-0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				*

Filing Entity: Central Telephone Company of Illinois

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($208)			
5	DEM	($110)			
6	LTS/TRS	($173)			
7	ISW	$0			
8	RDA	$0			
9	EDT	$3			
10	ITC	$45			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($442)			
16	TOTAL EXOGENOUS	($442)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00826	0.00826	0.00000	*
18	Orig Prem CCL Rate	0.00826	0.00826	0.00000	*
19	g	0.00206			
20	Proposed PCI	98.92	98.92	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.54	98.54	−0.000	*
23	SBI: Upper Limit	103.4644	103.4644	−0.000	*
24	SBI: Lower Limit	93.61	93.61	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.54	98.54	−0.000	*
28	SBI: Upper Limit	103.46	103.46	−0.000	*
29	SBI: Lower Limit	93.61	93.61	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.54	98.54	0.000	*
33	SBI: Upper Limit	103.46	103.46	−0.000	*
34	SBI: Lower Limit	93.61	93.61	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.46	103.46	−0.000	*
39	SBI: Lower Limit	93.61	93.61	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.54	98.54	−0.000	*
43	TS PCI	98.54	98.54	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	104.85	104.85	0.000	*
47	SBI: Upper Limit	104.92	104.92	−0.000	*
48	SBI: Lower Limit	94.93	94.93	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	94.93	94.93	−0.000	*
57	Sub−Index Up Lim	104.92	104.92	−0.000	*
58	Sub−Index Low Lim	94.93	94.93	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	94.93	94.93	0.000	*
62	Sub−Index Up Lim	104.92	104.92	−0.000	*
63	Sub−Index Low Lim	94.93	94.93	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	97.03	97.03	−0.000	*
67	SBI: Upper Limit	104.92	104.92	−0.000	*
68	SBI: Lower Limit	94.93	94.93	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	99.92	99.92	−0.000	*
77	Special PCI	99.93	99.93	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH LOW
82	LEC API Above PCI?				*
83	FCC API Above PCI?				

Filing Entity: Central Telephone Company of Virginia

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($186)			
5	DEM	($97)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$0			
10	ITC	$41			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($234)			
16	TOTAL EXOGENOUS	($234)			
	COMMON LINE				
17	Term Prem CCL Rate	0.02550	0.02550	0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.05084			
20	Proposed PCI	98.13	98.13	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.38	98.38	0.000	*
23	SBI: Upper Limit	103.3035	103.3035	−0.000	*
24	SBI: Lower Limit	93.47	93.47	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.38	98.38	−0.000	*
28	SBI: Upper Limit	103.30	103.30	−0.000	*
29	SBI: Lower Limit	93.47	93.47	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.38	98.38	−0.000	*
33	SBI: Upper Limit	103.30	103.30	−0.000	*
34	SBI: Lower Limit	93.47	93.47	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.30	103.30	−0.000	*
39	SBI: Lower Limit	93.47	93.47	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.38	98.38	−0.000	*
43	TS PCI	98.38	98.38	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	100.06	100.06	−0.000	*
47	SBI: Upper Limit	105.01	105.01	−0.000	*
48	SBI: Lower Limit	95.01	95.01	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	99.95	99.95	0.000	*
57	Sub−Index Up Lim	105.01	105.01	−0.000	*
58	Sub−Index Low Lim	95.01	95.01	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	99.97	99.97	0.000	*
67	SBI: Upper Limit	105.01	105.01	−0.000	*
68	SBI: Lower Limit	95.01	95.01	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	100.01	100.01	0.000	*
77	Special PCI	100.01	100.01	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				*

Filing Entity: Central Telephone Company of North Carolina

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$165			
5	DEM	($69)			
6	LTS/TRS	($356)			
7	ISW	$0			
8	RDA	$0			
9	EDT	$10			
10	ITC	$34			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($216)			
16	TOTAL EXOGENOUS	($221)			
	COMMON LINE				
17	Term From CCL Rate	0.02036	0.02035	−0.00000	*
18	Orig From CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.08102			
20	Proposed PCI	94.76	94.76	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.29	98.29	0.000	*
23	SBI: Upper Limit	103.2063	103.2063	−0.000	*
24	SBI: Lower Limit	93.38	93.38	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.29	98.29	−0.000	*
28	SBI: Upper Limit	103.21	103.21	−0.000	*
29	SBI: Lower Limit	93.38	93.38	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.29	98.29	0.000	*
33	SBI: Upper Limit	103.21	103.21	−0.000	*
34	SBI: Lower Limit	93.38	93.38	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.21	103.21	−0.000	*
39	SBI: Lower Limit	93.38	93.38	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.29	98.29	0.000	*
43	TS PCI	98.29	98.29	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	100.36	100.36	0.000	*
47	SBI: Upper Limit	105.26	105.26	−0.000	*
48	SBI: Lower Limit	95.25	95.25	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	100.23	100.23	−0.000	*
57	Sub−Index Up Lim	105.26	105.26	−0.000	*
58	Sub−Index Low Lim	95.25	95.25	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	100.21	100.21	−0.000	*
67	SBI: Upper Limit	105.26	105.26	−0.000	*
68	SBI: Lower Limit	95.25	95.25	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	100.26	100.26	−0.000	*
77	Special PCI	100.26	100.26	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				*

Filing Entity: Central Telephone Company of Nevada

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($1,648)			
5	DEM	($724)			
6	LTS/TRS	($1,991)			
7	ISW	$0			
8	RDA	$0			
9	EDT	$26			
10	ITC	$138			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($4,200)			
16	TOTAL EXOGENOUS	($4,200)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00106	0.00106	0.00000	*
18	Orig Prem CCL Rate	0.00106	0.00106	0.00000	*
19	g	0.02546			
20	Proposed PCI	94.14	94.14	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	95.62	95.62	0.000	*
23	SBI: Upper Limit	100.4012	100.4012	−0.000	*
24	SBI: Lower Limit	90.84	90.84	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	95.62	95.62	−0.000	*
28	SBI: Upper Limit	100.40	100.40	−0.000	*
29	SBI: Lower Limit	90.84	90.84	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	95.62	95.62	−0.000	*
33	SBI: Upper Limit	100.40	100.40	−0.000	*
34	SBI: Lower Limit	90.84	90.84	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	100.40	100.40	−0.000	*
39	SBI: Lower Limit	90.84	90.84	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	95.62	95.62	−0.000	*
43	TS PCI	95.62	95.62	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	99.29	99.29	0.000	*
47	SBI: Upper Limit	103.95	103.95	−0.000	*
48	SBI: Lower Limit	94.05	94.05	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	99.13	99.13	−0.000	*
52	SBI: Upper Limit	103.95	103.95	−0.000	*
53	SBI: Lower Limit	94.05	94.05	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	98.65	98.65	−0.000	*
57	Sub−Index Up Lim	103.95	103.95	−0.000	*
58	Sub−Index Low Lim	94.05	94.05	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	99.03	99.03	0.000	*
62	Sub−Index Up Lim	103.95	103.95	−0.000	*
63	Sub−Index Low Lim	94.05	94.05	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	98.76	98.76	−0.000	*
67	SBI: Upper Limit	103.95	103.95	−0.000	*
68	SBI: Lower Limit	94.05	94.05	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Acces				
76	Special API	98.91	98.91	−0.000	*
77	Special PCI	99.00	99.00	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	100.00	NONE	100.000	HIGH
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				*

Filing Entity: COTC

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($2,102)			
5	DEM	$97			
6	LTS/TRS	$14,559			
7	ISW	($61)			
8	RDA	$0			
9	EDT	$305			
10	ITC	$328			
11	REMOVAL SHARING/LOW END ADJ	($5,019)			
12	REVISION SHARING/LOW END ADJ	($2,997)			
13	SHARING/LOW END ADJ	$11,974			
14	OTHER	$4,078			
15	TOTAL OF INDIVIDUALS	$21,262			
16	TOTAL EXOGENOUS	$21,221			
	COMMON LINE				
17	Term Prem CCL Rate	0.02986	0.04472	-0.01486	LOW
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.04377			
20	Proposed PCI	109.75	109.75	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	0.00	NONE	0.000	*
23	SBI: Upper Limit	0.0000	NONE	0.000	*
24	SBI: Lower Limit	0.00	NONE	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	0.00	NONE	0.000	*
28	SBI: Upper Limit	0.00	NONE	0.000	*
29	SBI: Lower Limit	0.00	NONE	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	0.00	NONE	0.000	*
33	SBI: Upper Limit	0.00	NONE	0.000	*
34	SBI: Lower Limit	0.00	NONE	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	0.00	NONE	0.000	*
38	SBI: Upper Limit	0.00	NONE	0.000	*
39	SBI: Lower Limit	0.00	NONE	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	0.00	NONE	0.000	*
43	TS PCI	0.00	NONE	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	0.00	NONE	0.000	*
47	SBI: Upper Limit	0.00	NONE	0.000	*
48	SBI: Lower Limit	0.00	NONE	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	0.00	NONE	0.000	*
57	Sub-Index Up Lim	0.00	NONE	0.000	*
58	Sub-Index Low Lim	0.00	NONE	0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	0.00	NONE	0.000	*
62	Sub-Index Up Lim	0.00	NONE	0.000	*
63	Sub-Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	0.00	NONE	0.000	*
67	SBI: Upper Limit	0.00	NONE	0.000	*
68	SBI: Lower Limit	0.00	NONE	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	0.00	NONE	0.000	*
77	Special PCI	0.00	NONE	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: COCT – GSTC/CONTEL OF CALIFORNIA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($42)			
5	DEM	($229)			
6	LTS/TRS	$0			
7	HW	$0			
8	RDA	$0			
9	EDT	$23			
10	ITC	$13			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$1,395			
14	OTHER	$418			
15	TOTAL OF INDIVIDUALS	$1,579			
16	TOTAL EXOGENOUS	$1,577			
	COMMON LINE				
17	Term From CCL Rate	0.00000	NONE	0.00000	*
18	Orig From CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	93.06	93.06	−0.000	*
23	SBI: Upper Limit	102.7477	102.7476	0.000	*
24	SBI: Lower Limit	92.96	92.96	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.00	98.00	−0.000	*
28	SBI: Upper Limit	98.75	98.75	−0.000	*
29	SBI: Lower Limit	87.53	87.53	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	88.59	88.59	−0.001	*
33	SBI: Upper Limit	98.54	98.54	0.000	*
34	SBI: Lower Limit	87.35	87.35	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	101.00	101.00	−0.000	*
38	SBI: Upper Limit	110.24	110.24	0.000	*
39	SBI: Lower Limit	99.74	99.74	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	92.34	92.34	0.000	*
43	TS PCI	97.03	97.03	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	98.87	98.87	0.000	*
47	SBI: Upper Limit	107.72	107.72	0.000	*
48	SBI: Lower Limit	97.46	97.46	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.69	98.69	−0.003	*
52	SBI: Upper Limit	107.65	107.65	0.000	*
53	SBI: Lower Limit	97.40	97.40	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	95.91	95.91	−0.000	*
57	Sub−Index Up Lim	103.79	103.79	−0.000	*
58	Sub−Index Low Lim	93.91	93.91	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	95.98	95.98	0.000	*
67	SBI: Upper Limit	104.41	104.41	0.000	*
68	SBI: Lower Limit	94.47	94.47	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	97.17	97.17	−0.000	*
77	Special PCI	104.42	104.42	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: COCR – GSTC/CONTEL CENTRAL REGION

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($61)			
5	DEM	($266)			
6	LTS/TRS	$0			
7	ISW	($1)			
8	RDA	$0			
9	EDT	$100			
10	ITC	$32			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$2,205			
14	OTHER	$478			
15	TOTAL OF INDIVIDUALS	$2,467			
16	TOTAL EXOGENOUS	$2,464			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	95.92	95.92	−0.000	*
23	SBI: Upper Limit	104.0114	104.0114	−0.000	*
24	SBI: Lower Limit	94.11	94.11	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	89.23	89.23	−0.000	*
28	SBI: Upper Limit	96.64	96.64	−0.000	*
29	SBI: Lower Limit	87.44	87.44	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	92.35	92.35	−0.000	*
33	SBI: Upper Limit	100.26	100.26	−0.000	*
34	SBI: Lower Limit	90.73	90.73	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	108.52	108.52	−0.000	*
39	SBI: Lower Limit	98.19	98.19	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	94.05	94.05	0.000	*
43	TS PCI	97.20	97.20	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	100.63	100.62	0.000	*
47	SBI: Upper Limit	105.41	105.41	−0.000	*
48	SBI: Lower Limit	95.37	95.37	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	101.56	101.56	−0.007	*
52	SBI: Upper Limit	106.30	106.30	−0.000	*
53	SBI: Lower Limit	96.17	96.17	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	98.84	98.84	−0.000	*
57	Sub−Index Up Lim	103.34	103.34	0.000	*
58	Sub−Index Low Lim	93.50	93.50	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	100.00	100.00	0.000	*
62	Sub−Index Up Lim	109.02	109.02	−0.000	*
63	Sub−Index Low Lim	98.63	98.63	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	98.50	98.50	−0.000	*
67	SBI: Upper Limit	103.67	103.67	−0.000	*
68	SBI: Lower Limit	93.80	93.80	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	99.71	99.71	−0.000	*
77	Special PCI	104.47	104.47	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: COEN – GSTC/CONTEL EAST NORTH

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($61)			
5	DEM	$33			
6	LTS/TRS	$0			
7	ISW	($1)			
8	RDA	$0			
9	EDT	$27			
10	ITC	$26			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$495			
14	OTHER	$142			
15	TOTAL OF INDIVIDUALS	$661			
16	TOTAL EXOGENOUS	$662			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.01	98.01	−0.000	*
23	SBI: Upper Limit	107.2954	107.2954	−0.000	*
24	SBI: Lower Limit	97.08	97.08	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.04	98.04	0.000	*
28	SBI: Upper Limit	107.37	107.37	0.000	*
29	SBI: Lower Limit	97.14	97.14	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.97	97.97	0.000	*
33	SBI: Upper Limit	107.29	107.29	0.000	*
34	SBI: Lower Limit	97.07	97.07	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	109.52	109.52	0.000	*
39	SBI: Lower Limit	99.09	99.09	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.32	98.32	−0.000	*
43	TS PCI	107.26	107.26	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	98.50	98.50	0.000	*
47	SBI: Upper Limit	103.50	103.50	0.000	*
48	SBI: Lower Limit	93.65	93.65	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	97.56	97.56	−0.000	*
57	Sub−Index Up Lim	104.10	104.10	−0.000	*
58	Sub−Index Low Lim	94.18	94.18	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	94.91	94.91	0.000	*
67	SBI: Upper Limit	102.62	102.62	0.000	*
68	SBI: Lower Limit	92.85	92.84	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	97.33	97.33	0.000	*
77	Special PCI	103.10	103.10	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: COES – GSTC/CONTEL EAST SOUTH

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($20)			
5	DEM	($384)			
6	LTS/TRS	$0			
7	IBW	($0)			
8	RDA	$0			
9	EDT	$52			
10	ITC	$84			
11	REMOVAL SHARING/LOW END ADJ	($2,465)			
12	REVISION SHARING/LOW END ADJ	($1,407)			
13	SHARING/LOW END ADJ	$1,758			
14	OTHER	$297			
15	TOTAL OF INDIVIDUALS	($2,117)			
16	TOTAL EXOGENOUS	($2,120)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	95.14	95.14	−0.000	*
23	SBI: Upper Limit	95.2215	95.2215	0.000	*
24	SBI: Lower Limit	86.15	86.15	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	88.65	88.65	−0.000	*
28	SBI: Upper Limit	95.44	95.44	0.000	*
29	SBI: Lower Limit	86.35	86.35	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	93.72	93.72	−0.000	*
33	SBI: Upper Limit	95.46	95.46	0.000	*
34	SBI: Lower Limit	86.37	86.37	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	99.00	99.00	−0.000	*
38	SBI: Upper Limit	99.39	99.39	0.000	*
39	SBI: Lower Limit	89.92	89.92	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	93.84	93.84	−0.000	*
43	TS PCI	94.26	94.26	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	97.99	97.99	0.000	*
47	SBI: Upper Limit	103.77	103.77	−0.000	*
48	SBI: Lower Limit	93.88	93.88	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	97.86	97.86	−0.002	*
52	SBI: Upper Limit	101.98	101.98	0.000	*
53	SBI: Lower Limit	92.27	92.27	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	98.61	98.61	−0.000	*
57	Sub−Index Up Lim	105.00	105.00	0.000	*
58	Sub−Index Low Lim	95.00	95.00	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	100.00	100.00	0.000	*
62	Sub−Index Up Lim	101.98	101.98	0.000	*
63	Sub−Index Low Lim	92.27	92.27	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	95.93	95.93	−0.000	*
67	SBI: Upper Limit	103.82	103.82	0.000	*
68	SBI: Lower Limit	93.93	93.93	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	101.65	101.65	0.000	*
72	SBI: Upper Limit	103.67	103.67	−0.000	*
73	SBI: Lower Limit	93.79	93.79	−0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	96.70	96.70	−0.000	*
77	Special PCI	103.90	103.90	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES in thousands				
4	SPF	($31)			
5	DEM	($27)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$13			
10	ITC	$15			
11	REMOVAL SHARING/LOW END ADJ	($339)			
12	REVISION SHARING/LOW END ADJ	$12			
13	SHARING/LOW END ADJ	$23			
14	OTHER	$75			
15	TOTAL OF INDIVIDUALS	($259)			
16	TOTAL EXOGENOUS	($259)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.76	98.76	0.000	*
23	SBI: Upper Limit	98.3293	98.3293	−0.000	*
24	SBI: Lower Limit	88.96	88.96	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	92.39	92.39	−0.000	*
28	SBI: Upper Limit	98.69	98.69	−0.000	*
29	SBI: Lower Limit	89.29	89.29	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.38	98.38	0.000	*
33	SBI: Upper Limit	97.99	97.99	0.000	*
34	SBI: Lower Limit	88.66	88.66	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	101.67	101.67	0.000	*
39	SBI: Lower Limit	91.99	91.99	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	95.96	95.96	0.000	*
43	TS PCI	96.27	96.27	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	93.61	93.61	−0.000	*
47	SBI: Upper Limit	101.13	101.13	0.000	*
48	SBI: Lower Limit	91.50	91.50	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	0.00	NONE	0.000	*
57	Sub−Index Up Lim	0.00	NONE	0.000	*
58	Sub−Index Low Lim	0.00	NONE	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	0.00	NONE	0.000	*
67	SBI: Upper Limit	0.00	NONE	0.000	*
68	SBI: Lower Limit	0.00	NONE	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	0.00	NONE	0.000	*
77	Special PCI	0.00	NONE	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: CONY – GSTC/CONTEL OF NEW YORK

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES in thousands				
4	SPF	$11			
5	DEM	($73)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$14			
10	ITC	$12			
11	REMOVAL SHARING/LOW END ADJ	($506)			
12	REVISION SHARING/LOW END ADJ	($270)			
13	SHARING/LOW END ADJ	$1,004			
14	OTHER	$165			
15	TOTAL OF INDIVIDUALS	$357			
16	TOTAL EXOGENOUS	$356			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	101.50	101.50	−0.000	*
23	SBI: Upper Limit	108.4025	108.4025	−0.000	*
24	SBI: Lower Limit	98.08	98.08	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	101.53	101.53	0.000	*
28	SBI: Upper Limit	108.50	108.50	−0.000	*
29	SBI: Lower Limit	98.17	98.17	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	101.44	101.44	0.000	*
33	SBI: Upper Limit	108.40	108.40	−0.000	*
34	SBI: Lower Limit	98.07	98.07	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	106.86	106.86	0.000	*
39	SBI: Lower Limit	98.68	98.68	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	102.14	102.14	0.000	*
43	TS PCI	104.71	104.71	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	98.41	98.41	0.000	*
47	SBI: Upper Limit	107.55	107.55	−0.000	*
48	SBI: Lower Limit	97.31	97.31	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.37	98.37	−0.002	*
52	SBI: Upper Limit	105.79	105.79	−0.000	*
53	SBI: Lower Limit	95.71	95.71	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	99.74	99.74	0.000	*
57	Sub−Index Up Lim	108.14	108.14	−0.000	*
58	Sub−Index Low Lim	97.84	97.84	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	100.00	100.00	0.000	*
62	Sub−Index Up Lim	105.79	105.79	−0.000	*
63	Sub−Index Low Lim	95.71	95.71	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	98.59	98.59	−0.006	*
67	SBI: Upper Limit	108.96	108.96	−0.000	*
68	SBI: Lower Limit	98.59	98.59	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	98.22	98.22	−0.000	*
77	Special PCI	107.27	107.27	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: COWW – GSTC/CONTEL OF THE WEST

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($62)			
5	DEM	$54			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$24			
10	ITC	$27			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	($6)			
14	OTHER	$201			
15	TOTAL OF INDIVIDUALS	$239			
16	TOTAL EXOGENOUS	$241			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.05	98.05	0.000	*
23	SBI: Upper Limit	104.1723	104.1724	−0.000	*
24	SBI: Lower Limit	94.25	94.25	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.21	98.21	0.000	*
28	SBI: Upper Limit	104.34	104.34	−0.000	*
29	SBI: Lower Limit	94.41	94.41	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.51	98.51	0.000	*
33	SBI: Upper Limit	104.66	104.66	−0.000	*
34	SBI: Lower Limit	94.70	94.70	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	106.25	106.25	−0.000	*
39	SBI: Lower Limit	96.13	96.13	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.55	98.55	0.000	*
43	TS PCI	105.04	105.04	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	92.79	92.79	−0.000	*
47	SBI: Upper Limit	100.73	100.73	−0.000	*
48	SBI: Lower Limit	91.14	91.14	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	91.24	91.24	−0.000	*
57	Sub−Index Up Lim	98.64	98.64	0.000	*
58	Sub−Index Low Lim	89.24	89.24	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	90.60	90.60	0.000	*
67	SBI: Upper Limit	98.62	98.62	0.000	*
68	SBI: Lower Limit	89.22	89.22	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	92.19	92.19	0.000	*
77	Special PCI	98.84	98.84	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

FILING ENTITY: COPA – GSTC/CONTEL OF PENNSYLVANIA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($9)			
5	DEM	($15)			
6	LTS/TRS	$0			
7	ISW	($0)			
8	RDA	$0			
9	EDT	$15			
10	ITC	$10			
11	REMOVAL SHARING/LOW END ADJ	$19			
12	REVISION SHARING/LOW END ADJ	($29)			
13	SHARING/LOW END ADJ	($711)			
14	OTHER	$29			
15	TOTAL OF INDIVIDUALS	($691)			
16	TOTAL EXOGENOUS	($691)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	88.39	88.39	−0.000	*
23	SBI: Upper Limit	89.3170	89.3170	0.000	*
24	SBI: Lower Limit	80.81	80.81	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	83.60	83.60	0.000	*
28	SBI: Upper Limit	91.21	91.21	0.000	*
29	SBI: Lower Limit	82.52	82.52	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	90.62	90.62	−0.000	*
33	SBI: Upper Limit	91.51	91.51	0.000	*
34	SBI: Lower Limit	82.79	82.79	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	92.00	92.00	−0.000	*
38	SBI: Upper Limit	92.99	92.99	0.000	*
39	SBI: Lower Limit	84.14	84.14	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	90.39	90.39	0.000	*
43	TS PCI	90.55	90.55	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	87.68	87.68	0.000	*
47	SBI: Upper Limit	91.01	91.01	0.000	*
48	SBI: Lower Limit	82.34	82.34	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	87.74	87.74	−0.000	*
57	Sub−Index Up Lim	98.72	98.72	−0.000	*
58	Sub−Index Low Lim	87.51	87.51	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	91.63	91.63	−0.001	*
67	SBI: Upper Limit	96.97	96.97	−0.000	*
68	SBI: Lower Limit	87.74	87.74	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	88.91	88.91	−0.000	*
77	Special PCI	88.94	88.94	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (OCD's)				
4	SPF	$13			
5	DEM	($95)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$5			
10	ITC	$11			
11	REMOVAL SHARING/LOW END ADJ	($248)			
12	REVISION SHARING/LOW END ADJ	($199)			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$48			
15	TOTAL OF INDIVIDUALS	($486)			
16	TOTAL EXOGENOUS	($486)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	•
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	•
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	•
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	91.16	91.16	0.000	•
23	SBI: Upper Limit	95.4001	95.3996	0.000	•
24	SBI: Lower Limit	86.31	86.31	0.000	•
25	LEC SBI Out Bounds?				•
26	FCC SBI Out Bounds?				•
	Local Transport				
27	Proposed SBI	85.97	85.97	−0.000	•
28	SBI: Upper Limit	93.92	93.92	0.000	•
29	SBI: Lower Limit	84.96	84.96	0.000	•
30	LEC SBI Out Bounds?				•
31	FCC SBI Out Bounds?				•
	Information				
32	Proposed SBI	95.36	95.36	−0.000	•
33	SBI: Upper Limit	95.46	95.46	0.000	•
34	SBI: Lower Limit	86.37	86.37	0.000	•
35	LEC SBI Out Bounds?				•
36	FCC SBI Out Bounds?				•
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	•
38	SBI: Upper Limit	100.00	100.00	0.000	•
39	SBI: Lower Limit	90.56	90.56	0.000	•
40	LEC SBI Out Bounds?				•
41	FCC SBI Out Bounds?				•
	Total Traffic Sensitive				
42	TS API	90.31	90.31	−0.000	•
43	TS PCI	90.80	90.80	0.000	•
44	LEC API Above PCI?				•
45	FCC API Above PCI?				•

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	90.44	90.44	0.000	•
47	SBI: Upper Limit	99.26	99.26	−0.000	•
48	SBI: Lower Limit	89.83	89.83	0.000	•
49	LEC SBI Out Bounds?				•
50	FCC SBI Out Bounds?				•
	Audio & Video				
51	Proposed SBI	97.39	97.39	0.000	•
52	SBI: Upper Limit	99.84	99.84	0.000	•
53	SBI: Lower Limit	90.33	90.33	−0.000	•
54	LEC SBI Out Bounds?				•
55	FCC SBI Out Bounds?				•
	HiCap				
	DS1				
56	Prop Sub−Index	89.48	89.48	−0.000	•
57	Sub−Index Up Lim	97.90	97.90	0.000	•
58	Sub−Index Low Lim	88.58	88.58	0.000	•
59	LEC Sub−Ind Out?				•
60	FCC Sub−Ind Out?				•
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	•
62	Sub−Index Up Lim	0.00	NONE	0.000	•
63	Sub−Index Low Lim	0.00	NONE	0.000	•
64	LEC Sub−Ind Out?				•
65	FCC Sub−Ind Out?				•
	Total HiCap				
66	Proposed SBI	89.20	89.20	−0.000	•
67	SBI: Upper Limit	98.04	98.04	0.000	•
68	SBI: Lower Limit	88.71	88.71	0.000	•
69	LEC SBI Out?				•
70	FCC SBI Out?				•
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	•
72	SBI: Upper Limit	0.00	NONE	0.000	•
73	SBI: Lower Limit	0.00	NONE	0.000	•
74	LEC SBI Out Bounds?				•
75	FCC SBI Out Bounds?				•
	Total Special Access				
76	Special API	90.37	90.37	−0.000	•
77	Special PCI	100.31	100.31	−0.000	•
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	•
81	Interexchange PCI	0.00	NONE	0.000	•
82	LEC API Above PCI?				•
83	FCC API Above PCI?				•

Filing Entity: GTTC – GTE TOTAL

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($10,563)			
5	DEM	$1,029			
6	LTS/TRS	$52,064			
7	ISW	($820)			
8	RDA	($108)			
9	EDT	$1,307			
10	ITC	$2,899			
11	REMOVAL SHARING/LOW END ADJ	($2,085)			
12	REVISION SHARING/LOW END ADJ	($7,146)			
13	SHARING/LOW END ADJ	($4,450)			
14	OTHER	$15,237			
15	TOTAL OF INDIVIDUALS	$47,395			
16	TOTAL EXOGENOUS	$47,194			
	COMMON LINE				
17	Term Prem CCL Rate	0.01708	0.02368	–0.00660	LOW
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.05529			
20	Proposed PCI	96.05	96.05	–0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	0.00	NONE	0.000	*
23	SBI: Upper Limit	0.0000	NONE	0.000	*
24	SBI: Lower Limit	0.00	NONE	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	0.00	NONE	0.000	*
28	SBI: Upper Limit	0.00	NONE	0.000	*
29	SBI: Lower Limit	0.00	NONE	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	0.00	NONE	0.000	*
33	SBI: Upper Limit	0.00	NONE	0.000	*
34	SBI: Lower Limit	0.00	NONE	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	0.00	NONE	0.000	*
38	SBI: Upper Limit	0.00	NONE	0.000	*
39	SBI: Lower Limit	0.00	NONE	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	0.00	NONE	0.000	*
43	TS PCI	0.00	NONE	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	0.00	NONE	0.000	*
47	SBI: Upper Limit	0.00	NONE	0.000	*
48	SBI: Lower Limit	0.00	NONE	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	*
52	SBI: Upper Limit	0.00	NONE	0.000	*
53	SBI: Lower Limit	0.00	NONE	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	0.00	NONE	0.000	*
57	Sub–Index Up Lim	0.00	NONE	0.000	*
58	Sub–Index Low Lim	0.00	NONE	0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	0.00	NONE	0.000	*
62	Sub–Index Up Lim	0.00	NONE	0.000	*
63	Sub–Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	0.00	NONE	0.000	*
67	SBI: Upper Limit	0.00	NONE	0.000	*
68	SBI: Lower Limit	0.00	NONE	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	0.00	NONE	0.000	*
77	Special PCI	0.00	NONE	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTAK – GTE ALASKA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($11)			
5	DEM	$4			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$0			
10	ITC	$0			
11	REMOVAL SHARING/LOW END ADJ	$66			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	($63)			
14	OTHER	$8			
15	TOTAL OF INDIVIDUALS	($2)			
16	TOTAL EXOGENOUS	($2)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.94	98.94	0.000	*
23	SBI: Upper Limit	101.6776	101.6776	−0.000	*
24	SBI: Lower Limit	91.99	91.99	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	98.41	98.41	0.000	*
28	SBI: Upper Limit	100.77	100.77	0.000	*
29	SBI: Lower Limit	91.17	91.17	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.32	97.32	0.000	*
33	SBI: Upper Limit	101.72	101.72	−0.000	*
34	SBI: Lower Limit	92.03	92.03	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	104.52	104.52	−0.000	*
39	SBI: Lower Limit	94.56	94.56	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	99.84	99.84	0.000	*
43	TS PCI	99.84	99.84	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	94.03	94.03	0.000	*
47	SBI: Upper Limit	97.30	97.30	0.000	*
48	SBI: Lower Limit	88.03	88.03	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	94.27	94.27	−0.001	*
52	SBI: Upper Limit	97.13	97.13	0.000	*
53	SBI: Lower Limit	87.88	87.88	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	97.99	97.99	−0.000	*
57	Sub−Index Up Lim	104.34	104.34	0.000	*
58	Sub−Index Low Lim	94.40	94.40	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	97.28	97.28	0.000	*
67	SBI: Upper Limit	104.34	104.34	0.000	*
68	SBI: Lower Limit	94.40	94.40	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	93.74	93.74	0.000	*
77	Special PCI	93.75	93.75	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTCA – GTE CALIFORNIA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	$3			
5	DEM	($2,311)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$310			
10	ITC	$534			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($742)			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$1,787			
15	TOTAL OF INDIVIDUALS	($418)			
16	TOTAL EXOGENOUS	($451)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	87.53	87.53	0.000	*
23	SBI: Upper Limit	90.9474	90.9474	−0.000	*
24	SBI: Lower Limit	82.29	82.29	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	32.12	32.12	0.000	*
28	SBI: Upper Limit	33.38	33.38	−0.000	*
29	SBI: Lower Limit	30.20	30.20	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	101.70	101.70	0.000	*
33	SBI: Upper Limit	105.69	105.69	0.000	*
34	SBI: Lower Limit	95.62	95.62	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.93	103.93	0.000	*
39	SBI: Lower Limit	94.03	94.03	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	64.96	64.96	0.000	*
43	TS PCI	93.92	93.92	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	72.65	72.65	−0.000	*
47	SBI: Upper Limit	77.53	77.53	−0.000	*
48	SBI: Lower Limit	70.15	70.15	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	94.33	94.33	0.000	*
52	SBI: Upper Limit	103.68	103.68	−0.000	*
53	SBI: Lower Limit	93.81	93.81	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	62.68	62.68	−0.000	*
57	Sub−Index Up Lim	67.04	67.04	0.000	*
58	Sub−Index Low Lim	60.65	60.65	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	82.30	82.30	−0.000	*
62	Sub−Index Up Lim	88.48	88.48	0.000	*
63	Sub−Index Low Lim	80.05	80.05	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	60.25	60.25	−0.000	*
67	SBI: Upper Limit	65.26	65.26	0.000	*
68	SBI: Lower Limit	59.05	59.05	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	66.96	66.96	−0.000	*
77	Special PCI	104.93	104.93	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTFL – GTE FLORIDA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($125)			
5	DEM	($1,996)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$140			
10	ITC	$411			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($901)			
13	SHARING/LOW END ADJ	$810			
14	OTHER	$941			
15	TOTAL OF INDIVIDUALS	($721)			
16	TOTAL EXOGENOUS	($745)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	•
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	•
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	•
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	88.37	88.37	0.000	•
23	SBI: Upper Limit	91.3912	91.3912	0.000	•
24	SBI: Lower Limit	82.69	82.69	0.000	•
25	LEC SBI Out Bounds?				•
26	FCC SBI Out Bounds?				•
	Local Transport				
27	Proposed SBI	58.45	58.45	−0.000	•
28	SBI: Upper Limit	60.46	60.46	−0.000	•
29	SBI: Lower Limit	54.70	54.70	−0.000	•
30	LEC SBI Out Bounds?				•
31	FCC SBI Out Bounds?				•
	Information				
32	Proposed SBI	74.56	74.56	0.000	•
33	SBI: Upper Limit	77.13	77.13	−0.000	•
34	SBI: Lower Limit	69.78	69.78	0.000	•
35	LEC SBI Out Bounds?				•
36	FCC SBI Out Bounds?				•
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	•
38	SBI: Upper Limit	103.43	103.43	−0.000	•
39	SBI: Lower Limit	93.58	93.58	−0.000	•
40	LEC SBI Out Bounds?				•
41	FCC SBI Out Bounds?				•
	Total Traffic Senstive				
42	TS API	79.10	79.10	−0.000	•
43	TS PCI	86.13	86.13	−0.000	•
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	78.20	78.20	−0.000	•
47	SBI: Upper Limit	82.63	82.63	0.000	•
48	SBI: Lower Limit	74.94	74.94	−0.000	•
49	LEC SBI Out Bounds?				•
50	FCC SBI Out Bounds?				•
	Audio & Video				
51	Proposed SBI	95.77	95.77	0.000	•
52	SBI: Upper Limit	101.85	101.85	−0.000	•
53	SBI: Lower Limit	92.15	92.15	0.000	•
54	LEC SBI Out Bounds?				•
55	FCC SBI Out Bounds?				•
	HiCap				
	DS1				
56	Prop Sub−Index	63.92	63.92	−0.000	•
57	Sub−Index Up Lim	67.93	67.93	0.000	•
58	Sub−Index Low Lim	61.46	61.46	0.000	•
59	LEC Sub−Ind Out?				•
60	FCC Sub−Ind Out?				•
	DS3				
61	Prop Sub−Index	67.77	67.77	0.000	•
62	Sub−Index Up Lim	71.51	71.51	0.000	•
63	Sub−Index Low Lim	64.70	64.70	0.000	•
64	LEC Sub−Ind Out?				•
65	FCC Sub−Ind Out?				•
	Total HiCap				
66	Proposed SBI	60.96	60.96	−0.000	•
67	SBI: Upper Limit	65.67	65.67	0.000	•
68	SBI: Lower Limit	59.41	59.41	−0.000	•
69	LEC SBI Out?				•
70	FCC SBI Out?				•
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	•
72	SBI: Upper Limit	0.00	NONE	0.000	•
73	SBI: Lower Limit	0.00	NONE	0.000	•
74	LEC SBI Out Bounds?				•
75	FCC SBI Out Bounds?				•
	Total Special Access				
76	Special API	67.96	67.96	−0.000	•
77	Special PCI	100.40	100.40	−0.000	•
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	•
81	Interexchange PCI	0.00	NONE	0.000	•
82	LEC API Above PCI?				•
83	FCC API Above PCI?				•

Filing Entity: GTHI – GTE HAWAII

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($21)			
5	DEM	($640)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$113			
10	ITC	$116			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$2,695			
14	OTHER	$1,350			
15	TOTAL OF INDIVIDUALS	$3,613			
16	TOTAL EXOGENOUS	$3,600			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	90.98	90.98	–0.000	*
23	SBI: Upper Limit	98.4428	98.4428	0.000	*
24	SBI: Lower Limit	89.07	89.07	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	83.83	83.83	0.000	*
28	SBI: Upper Limit	90.70	90.70	–0.000	*
29	SBI: Lower Limit	82.07	82.07	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	91.05	91.05	0.000	*
33	SBI: Upper Limit	98.52	98.52	–0.000	*
34	SBI: Lower Limit	89.14	89.14	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	108.21	108.21	0.000	*
39	SBI: Lower Limit	97.90	97.90	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	88.53	88.53	0.000	*
43	TS PCI	96.46	96.46	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	83.09	83.09	–0.000	*
47	SBI: Upper Limit	91.33	91.33	–0.000	*
48	SBI: Lower Limit	82.63	82.63	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	99.18	99.18	0.000	*
52	SBI: Upper Limit	108.97	108.97	0.000	*
53	SBI: Lower Limit	98.59	98.59	–0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	66.17	66.17	–0.000	*
57	Sub–Index Up Lim	72.71	72.71	0.000	*
58	Sub–Index Low Lim	65.79	65.79	–0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	90.65	90.65	0.000	*
62	Sub–Index Up Lim	99.60	99.60	–0.000	*
63	Sub–Index Low Lim	90.11	90.11	0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	70.86	70.86	–0.000	*
67	SBI: Upper Limit	77.90	77.90	0.000	*
68	SBI: Lower Limit	70.48	70.48	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	80.08	80.08	0.000	*
77	Special PCI	109.53	109.53	–0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	84.20	84.20	0.000	*
81	Interexchange PCI	107.63	107.63	0.001	*
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				LOW

Filing Entity: GTIL – GTE ILLINOIS

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($3)			
5	DEM	($289)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$48			
10	ITC	$20			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($308)			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$464			
15	TOTAL OF INDIVIDUALS	($68)			
16	TOTAL EXOGENOUS	($72)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.89	97.89	−0.000	*
23	SBI: Upper Limit	101.9294	101.9294	0.000	*
24	SBI: Lower Limit	92.22	92.22	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	90.10	90.10	0.000	*
28	SBI: Upper Limit	93.63	93.63	0.000	*
29	SBI: Lower Limit	84.89	84.89	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.16	98.16	−0.000	*
33	SBI: Upper Limit	102.22	102.22	0.000	*
34	SBI: Lower Limit	92.49	92.49	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	104.14	104.14	0.000	*
39	SBI: Lower Limit	94.22	94.22	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	94.11	94.11	0.000	*
43	TS PCI	95.12	95.12	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	109.55	109.55	−0.000	*
47	SBI: Upper Limit	113.43	113.43	−0.000	*
48	SBI: Lower Limit	102.63	102.63	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	103.78	103.78	−0.000	*
52	SBI: Upper Limit	110.69	110.69	−0.000	*
53	SBI: Lower Limit	100.15	100.15	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	100.99	100.99	0.000	*
57	Sub−Index Up Lim	106.66	106.66	−0.000	*
58	Sub−Index Low Lim	96.52	96.52	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	100.18	100.18	0.000	*
62	Sub−Index Up Lim	107.06	107.06	0.000	*
63	Sub−Index Low Lim	96.86	96.86	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	100.42	100.42	−0.000	*
67	SBI: Upper Limit	106.13	106.13	−0.000	*
68	SBI: Lower Limit	96.02	96.02	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	103.75	103.75	−0.000	*
77	Special PCI	103.77	103.77	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	91.96	91.96	0.000	*
81	Interexchange PCI	92.00	92.37	−0.370	LOW
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

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Filing Entity: GTIN – GTE INDIANA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($72)			
5	DEM	($725)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$58			
10	ITC	$103			
11	REMOVAL SHARING/LOW END ADJ	$1,353			
12	REVISION SHARING/LOW END ADJ	($521)			
13	SHARING/LOW END ADJ	($1,408)			
14	OTHER	$425			
15	TOTAL OF INDIVIDUALS	($787)			
16	TOTAL EXOGENOUS	($794)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	92.93	92.93	−0.000	*
23	SBI: Upper Limit	95.7367	95.7367	−0.000	*
24	SBI: Lower Limit	86.62	86.62	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	76.78	76.78	−0.000	*
28	SBI: Upper Limit	81.71	81.71	0.000	*
29	SBI: Lower Limit	73.93	73.93	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	95.37	95.37	0.000	*
33	SBI: Upper Limit	98.26	98.26	−0.000	*
34	SBI: Lower Limit	88.90	88.90	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.03	103.03	−0.000	*
39	SBI: Lower Limit	93.22	93.22	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	86.89	86.89	0.000	*
43	TS PCI	86.89	86.89	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	94.02	94.02	0.000	*
47	SBI: Upper Limit	103.36	103.36	0.000	*
48	SBI: Lower Limit	93.52	93.52	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	101.17	101.17	0.000	*
52	SBI: Upper Limit	104.42	104.42	−0.000	*
53	SBI: Lower Limit	94.48	94.48	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	92.92	92.92	−0.000	*
57	Sub–Index Up Lim	99.46	99.46	0.000	*
58	Sub–Index Low Lim	89.99	89.99	0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	95.23	95.23	−0.000	*
62	Sub–Index Up Lim	100.26	100.26	−0.000	*
63	Sub–Index Low Lim	90.73	90.73	−0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	90.06	90.06	−0.000	*
67	SBI: Upper Limit	97.44	97.44	0.000	*
68	SBI: Lower Limit	88.16	88.16	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	92.01	92.01	−0.000	*
77	Special PCI	96.88	96.88	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	91.96	91.96	0.000	*
81	Interexchange PCI	92.00	92.47	−0.477	LOW
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

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Filing Entity: GTIM – GTE IOWA + MINNESOTA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($2)			
5	DEM	($95)			
6	LTS/TRS	$0			
7	ISW	($8)			
8	RDA	$0			
9	EDT	$6			
10	ITC	$21			
11	REMOVAL SHARING/LOW END ADJ	($389)			
12	REVISION SHARING/LOW END ADJ	($229)			
13	SHARING/LOW END ADJ	($483)			
14	OTHER	$100			
15	TOTAL OF INDIVIDUALS	($1,050)			
16	TOTAL EXOGENOUS	($1,081)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	93.51	93.51	0.000	*
23	SBI: Upper Limit	93.5130	93.5130	0.000	*
24	SBI: Lower Limit	84.61	84.61	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	78.01	78.01	−0.000	*
28	SBI: Upper Limit	85.07	85.07	0.000	*
29	SBI: Lower Limit	76.97	76.97	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	94.01	94.01	0.000	*
33	SBI: Upper Limit	94.02	94.02	0.000	*
34	SBI: Lower Limit	85.07	85.07	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	95.33	95.33	−0.000	*
38	SBI: Upper Limit	95.33	95.33	−0.000	*
39	SBI: Lower Limit	86.25	86.25	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	87.95	87.95	0.000	*
43	TS PCI	87.95	87.95	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	88.73	88.73	−0.000	*
47	SBI: Upper Limit	90.39	90.39	0.000	*
48	SBI: Lower Limit	81.78	81.78	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	95.86	95.86	−0.000	*
52	SBI: Upper Limit	98.36	98.36	−0.000	*
53	SBI: Lower Limit	88.99	88.99	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	78.86	78.86	−0.000	*
57	Sub-Index Up Lim	82.76	82.76	−0.000	*
58	Sub-Index Low Lim	74.86	74.86	−0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	0.00	NONE	0.000	*
62	Sub-Index Up Lim	0.00	NONE	0.000	*
63	Sub-Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	77.53	77.53	0.000	*
67	SBI: Upper Limit	81.66	81.66	−0.000	*
68	SBI: Lower Limit	74.06	74.06	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	85.35	85.35	−0.000	*
77	Special PCI	96.11	96.11	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

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Filing Entity: GTMI – GTE MICHIGAN

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	$28			
5	DEM	($250)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$17			
10	ITC	$86			
11	REMOVAL SHARING/LOW END ADJ	$71			
12	REVISION SHARING/LOW END ADJ	($255)			
13	SHARING/LOW END ADJ	($1,136)			
14	OTHER	$235			
15	TOTAL OF INDIVIDUALS	($1,204)			
16	TOTAL EXOGENOUS	($1,208)			
	COMMON LINE				
17	Term Prem COL Rate	0.00000	NONE	0.00000	*
18	Orig Prem COL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.27	98.27	−0.000	*
23	SBI: Upper Limit	99.2926	99.2926	0.000	*
24	SBI: Lower Limit	89.84	89.84	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	87.17	87.17	0.000	*
28	SBI: Upper Limit	93.86	93.86	0.000	*
29	SBI: Lower Limit	84.92	84.92	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.37	98.37	0.000	*
33	SBI: Upper Limit	99.40	99.40	0.000	*
34	SBI: Lower Limit	89.93	89.93	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	101.05	101.05	0.000	*
39	SBI: Lower Limit	91.42	91.42	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	92.00	92.00	0.000	*
43	TS PCI	92.00	92.00	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	110.89	110.89	0.000	*
47	SBI: Upper Limit	111.41	111.41	0.000	*
48	SBI: Lower Limit	100.80	100.80	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	105.22	105.22	0.001	*
52	SBI: Upper Limit	107.17	107.17	0.000	*
53	SBI: Lower Limit	96.97	96.97	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	89.89	89.89	−0.000	*
57	Sub−Index Up Lim	96.64	96.64	0.000	*
58	Sub−Index Low Lim	87.44	87.44	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	89.72	89.72	−0.000	*
67	SBI: Upper Limit	96.19	96.19	0.000	*
68	SBI: Lower Limit	87.03	87.03	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	97.22	97.22	0.000	*
77	Special PCI	97.23	97.23	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTMO – GTE MISSOURI

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($2)			
5	DEM	($81)			
6	LTS/TRS	$0			
7	ISW	($7)			
8	RDA	($112)			
9	EDT	$10			
10	ITC	$4			
11	REMOVAL SHARING/LOW END ADJ	$63			
12	REVISION SHARING/LOW END ADJ	($49)			
13	SHARING/LOW END ADJ	($169)			
14	OTHER	$84			
15	TOTAL OF INDIVIDUALS	($260)			
16	TOTAL EXOGENOUS	($259)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	91.00	91.00	0.000	*
23	SBI: Upper Limit	91.7362	91.7362	0.000	*
24	SBI: Lower Limit	83.00	83.00	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	79.76	79.76	0.000	*
28	SBI: Upper Limit	83.10	83.10	−0.000	*
29	SBI: Lower Limit	75.19	75.19	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	92.43	92.43	0.000	*
33	SBI: Upper Limit	93.20	93.20	−0.000	*
34	SBI: Lower Limit	84.32	84.32	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	−0.000	*
38	SBI: Upper Limit	100.83	100.83	0.000	*
39	SBI: Lower Limit	91.23	91.23	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	87.94	87.94	0.000	*
43	TS PCI	87.94	87.94	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	88.26	88.26	−0.000	*
47	SBI: Upper Limit	91.57	91.57	0.000	*
48	SBI: Lower Limit	82.85	82.85	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.03	98.03	0.003	*
52	SBI: Upper Limit	100.16	100.16	−0.000	*
53	SBI: Lower Limit	90.62	90.62	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	76.45	76.45	0.000	*
57	Sub-Index Up Lim	82.73	82.73	−0.000	*
58	Sub-Index Low Lim	74.86	74.86	−0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	81.21	81.21	0.000	*
62	Sub-Index Up Lim	83.36	83.36	−0.000	*
63	Sub-Index Low Lim	75.42	75.42	−0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	76.86	76.86	0.000	*
67	SBI: Upper Limit	82.50	82.50	−0.000	*
68	SBI: Lower Limit	74.64	74.64	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	80.64	80.64	−0.000	*
77	Special PCI	97.22	97.22	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

5010

Filing Entity: GTNA – GTE IDAHO + MONTANA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($24)			
5	DEM	($95)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$12			
10	ITC	$54			
11	REMOVAL SHARING/LOW END ADJ	($17)			
12	REVISION SHARING/LOW END ADJ	($641)			
13	SHARING/LOW END ADJ	($1,670)			
14	OTHER	$90			
15	TOTAL OF INDIVIDUALS	($2,291)			
16	TOTAL EXOGENOUS	($2,291)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	82.60	82.60	0.000	*
23	SBI: Upper Limit	82.5966	82.5966	0.000	*
24	SBI: Lower Limit	74.73	74.73	–0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	76.22	76.22	–0.000	*
28	SBI: Upper Limit	76.22	76.22	0.000	*
29	SBI: Lower Limit	68.96	68.96	–0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	82.50	82.50	0.000	*
33	SBI: Upper Limit	82.52	82.52	0.000	*
34	SBI: Lower Limit	74.66	74.66	–0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	92.02	92.02	–0.000	*
38	SBI: Upper Limit	92.02	92.02	0.000	*
39	SBI: Lower Limit	83.26	83.26	–0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	79.29	79.29	–0.000	*
43	TS PCI	79.35	79.35	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	85.48	85.48	–0.000	*
47	SBI: Upper Limit	91.20	91.20	–0.000	*
48	SBI: Lower Limit	82.51	82.51	–0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	85.77	85.77	0.000	*
52	SBI: Upper Limit	88.24	88.24	0.000	*
53	SBI: Lower Limit	79.84	79.84	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub–Index	66.71	66.71	0.000	*
57	Sub–Index Up Lim	66.82	66.82	–0.000	*
58	Sub–Index Low Lim	60.46	60.46	0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	88.95	88.95	0.000	*
62	Sub–Index Up Lim	88.95	88.95	–0.000	*
63	Sub–Index Low Lim	80.48	80.48	–0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HICap				
66	Proposed SBI	70.63	70.63	0.000	*
67	SBI: Upper Limit	70.64	70.64	–0.000	*
68	SBI: Lower Limit	63.91	63.91	–0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	80.12	80.12	0.000	*
77	Special PCI	87.75	87.75	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	83.05	83.05	0.000	*
81	Interexchange PCI	83.10	83.10	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTNB – GTE OREGON + WASHINGTON + W.C. CALIFORNIA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($69)			
5	DEM	($771)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$51			
10	ITC	$156			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$568			
15	TOTAL OF INDIVIDUALS	($65)			
16	TOTAL EXOGENOUS	($72)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	94.34	94.34	−0.000	*
23	SBI: Upper Limit	98.2975	98.2975	0.000	*
24	SBI: Lower Limit	88.94	88.94	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	75.30	75.30	0.000	*
28	SBI: Upper Limit	78.46	78.46	−0.000	*
29	SBI: Lower Limit	70.99	70.99	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.24	98.24	0.000	*
33	SBI: Upper Limit	102.37	102.37	−0.000	*
34	SBI: Lower Limit	92.62	92.62	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	104.20	104.20	−0.000	*
39	SBI: Lower Limit	94.26	94.26	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	85.12	85.12	−0.000	*
43	TS PCI	92.43	92.43	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	69.46	69.46	−0.000	*
47	SBI: Upper Limit	75.59	75.59	0.000	*
48	SBI: Lower Limit	68.39	68.39	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	95.15	95.15	0.001	*
52	SBI: Upper Limit	103.42	103.42	−0.000	*
53	SBI: Lower Limit	93.57	93.57	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	72.42	72.42	−0.000	*
57	Sub−Index Up Lim	77.46	77.46	−0.000	*
58	Sub−Index Low Lim	70.09	70.09	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	89.52	89.52	0.000	*
62	Sub−Index Up Lim	95.08	95.08	−0.000	*
63	Sub−Index Low Lim	86.03	86.03	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	68.81	68.81	−0.000	*
67	SBI: Upper Limit	74.21	74.21	0.000	*
68	SBI: Lower Limit	67.14	67.14	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	70.27	70.27	0.000	*
77	Special PCI	100.59	100.59	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	83.05	83.05	0.000	*
81	Interexchange PCI	83.10	90.08	−6.975	LOW
82	LEC API Above PCI?				*
83	FCC API Above PCI?				LOW

Filing Entity: GTNE – GTE NEBRASKA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($1)			
5	DEM	$12			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$1			
10	ITC	$0			
11	REMOVAL SHARING/LOW END ADJ	($201)			
12	REVISION SHARING/LOW END ADJ	($35)			
13	SHARING/LOW END ADJ	($92)			
14	OTHER	$28			
15	TOTAL OF INDIVIDUALS	($288)			
16	TOTAL EXOGENOUS	($288)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	103.38	103.38	0.000	*
23	SBI: Upper Limit	103.3820	103.3820	−0.000	*
24	SBI: Lower Limit	93.54	93.54	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	101.36	101.36	−0.000	*
28	SBI: Upper Limit	101.39	101.39	−0.000	*
29	SBI: Lower Limit	91.73	91.73	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	103.36	103.36	0.000	*
33	SBI: Upper Limit	103.36	103.36	−0.000	*
34	SBI: Lower Limit	93.52	93.52	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	0.00	NONE	0.000	*
38	SBI: Upper Limit	0.00	NONE	0.000	*
39	SBI: Lower Limit	0.00	NONE	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	102.60	102.60	−0.000	*
43	TS PCI	102.83	102.83	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	88.32	88.32	−0.000	*
47	SBI: Upper Limit	88.92	88.92	0.000	*
48	SBI: Lower Limit	80.45	80.45	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.64	102.64	0.000	*
52	SBI: Upper Limit	102.83	102.83	−0.000	*
53	SBI: Lower Limit	93.04	93.04	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub-Index	97.30	97.30	0.000	*
57	Sub-Index Up Lim	97.48	97.48	−0.000	*
58	Sub-Index Low Lim	88.20	88.20	−0.000	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	104.80	104.80	0.000	*
62	Sub-Index Up Lim	104.81	104.81	−0.000	*
63	Sub-Index Low Lim	94.83	94.83	0.000	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HICap				
66	Proposed SBI	99.05	99.05	0.000	*
67	SBI: Upper Limit	99.26	99.26	0.000	*
68	SBI: Lower Limit	89.80	89.80	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	93.08	93.08	0.000	*
77	Special PCI	95.48	95.48	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTOH – GTE OHIO

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	$7			
5	DEM	($401)			
6	LTS/TRS	$0			
7	ISW	($4)			
8	RDA	$0			
9	EDT	$32			
10	ITC	$118			
11	REMOVAL SHARING/LOW END ADJ	($824)			
12	REVISION SHARING/LOW END ADJ	($796)			
13	SHARING/LOW END ADJ	($714)			
14	OTHER	$631			
15	TOTAL OF INDIVIDUALS	($1,950)			
16	TOTAL EXOGENOUS	($1,957)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	96.19	96.19	−0.000	*
23	SBI: Upper Limit	99.0238	99.0238	0.000	*
24	SBI: Lower Limit	89.59	89.59	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	82.10	82.10	−0.000	*
28	SBI: Upper Limit	88.89	88.89	−0.000	*
29	SBI: Lower Limit	80.43	80.43	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.60	98.60	0.000	*
33	SBI: Upper Limit	99.29	99.29	0.000	*
34	SBI: Lower Limit	89.83	89.83	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	100.70	100.70	−0.000	*
39	SBI: Lower Limit	91.11	91.11	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	89.77	89.77	−0.000	*
43	TS PCI	91.36	91.36	0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	103.69	103.69	−0.000	*
47	SBI: Upper Limit	105.47	105.47	−0.000	*
48	SBI: Lower Limit	95.42	95.42	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	103.82	103.82	−0.001	*
52	SBI: Upper Limit	103.83	103.83	−0.000	*
53	SBI: Lower Limit	93.94	93.94	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	85.56	85.56	−0.000	*
57	Sub–Index Up Lim	92.50	92.50	0.000	*
58	Sub–Index Low Lim	83.69	83.69	−0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	73.85	73.85	0.000	*
62	Sub–Index Up Lim	75.49	75.49	−0.000	*
63	Sub–Index Low Lim	68.30	68.30	−0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	82.84	82.84	−0.000	*
67	SBI: Upper Limit	89.63	89.63	0.000	*
68	SBI: Lower Limit	81.09	81.09	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	93.33	93.33	0.000	*
77	Special PCI	97.74	97.74	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTPA – GTE PENNSYLVANIA

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	$0			
5	DEM	($260)			
6	LTS/TRS	$0			
7	ISW	($5)			
8	RDA	$0			
9	EDT	$37			
10	ITC	$16			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($250)			
13	SHARING/LOW END ADJ	($93)			
14	OTHER	$203			
15	TOTAL OF INDIVIDUALS	($340)			
16	TOTAL EXOGENOUS	($343)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.44	97.44	0.000	*
23	SBI: Upper Limit	100.1344	100.1344	0.000	*
24	SBI: Lower Limit	90.60	90.60	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	78.63	78.63	–0.000	*
28	SBI: Upper Limit	85.71	85.71	–0.000	*
29	SBI: Lower Limit	77.55	77.55	–0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.79	97.79	0.000	*
33	SBI: Upper Limit	100.50	100.50	–0.000	*
34	SBI: Lower Limit	90.93	90.93	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	102.77	102.77	0.000	*
39	SBI: Lower Limit	92.99	92.99	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	90.63	90.63	–0.000	*
43	TS PCI	90.64	90.64	–0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	104.38	104.38	–0.000	*
47	SBI: Upper Limit	107.18	107.18	0.000	*
48	SBI: Lower Limit	96.96	96.96	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	101.40	101.40	0.000	*
52	SBI: Upper Limit	104.97	104.97	–0.000	*
53	SBI: Lower Limit	94.97	94.97	–0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	101.96	101.96	–0.000	*
57	Sub–Index Up Lim	108.19	108.19	0.000	*
58	Sub–Index Low Lim	97.88	97.88	0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	98.00	98.00	0.000	*
62	Sub–Index Up Lim	104.41	104.41	–0.000	*
63	Sub–Index Low Lim	94.47	94.47	–0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	98.57	98.57	0.000	*
67	SBI: Upper Limit	104.83	104.83	–0.000	*
68	SBI: Lower Limit	94.85	94.85	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	100.88	100.88	–0.000	*
77	Special PCI	100.88	100.88	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTSO – GTE SOUTH

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($30)			
5	DEM	($1,065)			
6	LTS/TRS	$0			
7	ISW	($4)			
8	RDA	$0			
9	EDT	$104			
10	ITC	$370			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	($795)			
14	OTHER	$1,154			
15	TOTAL OF INDIVIDUALS	($287)			
16	TOTAL EXOGENOUS	($282)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	98.64	98.64	−0.000	*
23	SBI: Upper Limit	102.5096	102.5096	0.000	*
24	SBI: Lower Limit	92.75	92.75	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	82.83	82.83	0.000	*
28	SBI: Upper Limit	87.07	87.07	−0.000	*
29	SBI: Lower Limit	78.77	78.77	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.80	98.80	0.000	*
33	SBI: Upper Limit	102.69	102.69	−0.000	*
34	SBI: Lower Limit	92.91	92.91	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	103.94	103.94	0.000	*
39	SBI: Lower Limit	94.04	94.04	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	91.26	91.26	0.000	*
43	TS PCI	91.26	91.26	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	84.07	84.07	0.000	*
47	SBI: Upper Limit	89.71	89.71	−0.000	*
48	SBI: Lower Limit	81.17	81.17	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.31	98.31	−0.001	*
52	SBI: Upper Limit	103.99	103.99	−0.000	*
53	SBI: Lower Limit	94.09	94.09	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	76.12	76.12	0.000	*
57	Sub−Index Up Lim	81.36	81.36	−0.000	*
58	Sub−Index Low Lim	73.61	73.61	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	90.11	90.11	0.000	*
62	Sub−Index Up Lim	95.78	95.78	0.000	*
63	Sub−Index Low Lim	86.66	86.66	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	75.98	75.98	0.000	*
67	SBI: Upper Limit	81.63	81.63	−0.000	*
68	SBI: Lower Limit	73.88	73.88	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	79.39	79.39	0.000	*
77	Special PCI	101.50	101.50	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	95.74	95.74	−0.000	*
81	Interexchange PCI	95.79	95.79	−0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTSW – GTE SOUTHWEST

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($29)			
5	DEM	($1,155)			
6	LTS/TRS	$0			
7	I&W	($3)			
8	RDA	$0			
9	EDT	$169			
10	ITC	$92			
11	REMOVAL SHARING/LOW END ADJ	($812)			
12	REVISION SHARING/LOW END ADJ	($792)			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$1,165			
15	TOTAL OF INDIVIDUALS	($1,363)			
16	TOTAL EXOGENOUS	($1,377)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	89.09	89.09	0.000	*
23	SBI: Upper Limit	91.5340	91.5340	−0.000	*
24	SBI: Lower Limit	82.82	82.82	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	60.50	60.50	0.000	*
28	SBI: Upper Limit	62.17	62.17	0.000	*
29	SBI: Lower Limit	56.25	56.25	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	89.43	89.43	0.000	*
33	SBI: Upper Limit	91.91	91.91	−0.000	*
34	SBI: Lower Limit	83.15	83.15	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	−0.000	*
38	SBI: Upper Limit	102.77	102.77	−0.000	*
39	SBI: Lower Limit	92.98	92.98	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	76.13	76.13	−0.000	*
43	TS PCI	89.84	89.84	−0.000	*
44	LEC API Above PCI?				LOW
45	FCC API Above PCI?				LOW

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	81.83	81.83	0.000	*
47	SBI: Upper Limit	86.65	86.65	−0.000	*
48	SBI: Lower Limit	80.21	80.21	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	87.47	87.46	0.001	*
52	SBI: Upper Limit	93.59	93.59	0.000	*
53	SBI: Lower Limit	84.68	84.68	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	77.88	77.88	−0.000	*
57	Sub−Index Up Lim	81.89	81.89	0.000	*
58	Sub−Index Low Lim	74.09	74.09	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	78.17	78.17	−0.000	*
62	Sub−Index Up Lim	82.21	82.21	−0.000	*
63	Sub−Index Low Lim	74.38	74.38	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	73.55	73.55	−0.000	*
67	SBI: Upper Limit	77.88	77.88	0.000	*
68	SBI: Lower Limit	70.46	70.46	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	78.21	78.21	−0.000	*
77	Special PCI	98.75	98.75	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: GTWI – GTE WISCONSIN

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.00000			
2	X for CL, TS and SP	0.00000			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($4)			
5	DEM	($268)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$28			
10	ITC	$0			
11	REMOVAL SHARING/LOW END ADJ	($187)			
12	REVISION SHARING/LOW END ADJ	($180)			
13	SHARING/LOW END ADJ	($132)			
14	OTHER	$187			
15	TOTAL OF INDIVIDUALS	($576)			
16	TOTAL EXOGENOUS	($576)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00000	NONE	0.00000	*
18	Orig Prem CCL Rate	0.00000	NONE	0.00000	*
19	g	0.00000			
20	Proposed PCI	0.00	NONE	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.67	97.67	0.000	*
23	SBI: Upper Limit	99.8595	99.8595	0.000	*
24	SBI: Lower Limit	90.35	90.35	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	83.80	83.80	−0.000	*
28	SBI: Upper Limit	87.63	87.63	−0.000	*
29	SBI: Lower Limit	79.28	79.28	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	98.24	98.24	0.000	*
33	SBI: Upper Limit	100.46	100.46	0.000	*
34	SBI: Lower Limit	90.89	90.89	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	−0.000	*
38	SBI: Upper Limit	102.26	102.26	−0.000	*
39	SBI: Lower Limit	92.52	92.52	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	91.77	91.77	−0.000	*
43	TS PCI	91.78	91.78	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	102.74	102.74	0.000	*
47	SBI: Upper Limit	108.08	108.08	0.000	*
48	SBI: Lower Limit	97.79	97.79	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.93	102.93	−0.000	*
52	SBI: Upper Limit	108.05	108.05	0.000	*
53	SBI: Lower Limit	95.95	95.95	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	85.95	85.95	−0.000	*
57	Sub−Index Up Lim	92.80	92.80	−0.000	*
58	Sub−Index Low Lim	83.96	83.96	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	99.41	99.41	−0.000	*
62	Sub−Index Up Lim	104.43	104.43	−0.000	*
63	Sub−Index Low Lim	94.49	94.49	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	85.98	85.98	−0.000	*
67	SBI: Upper Limit	93.26	93.26	−0.000	*
68	SBI: Lower Limit	84.38	84.38	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	94.60	94.60	−0.000	*
77	Special PCI	102.35	102.35	0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

5018

Filing Entity: LTNE

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($165)			
5	DEM	($148)			
6	LTS/TRS	($419)			
7	ISW	($1)			
8	RDA	$0			
9	EDT	$0			
10	ITC	$79			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$162			
15	TOTAL OF INDIVIDUALS	($492)			
16	TOTAL EXOGENOUS	($494)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00144	0.00144	−0.00000	*
18	Orig Prem CCL Rate	0.00144	0.00144	−0.00000	*
19	g	0.01542			
20	Proposed PCI	94.31	94.31	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	104.25	104.25	0.000	*
23	SBI: Upper Limit	104.2491	104.2491	−0.000	*
24	SBI: Lower Limit	94.32	94.32	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	94.42	94.42	0.000	*
28	SBI: Upper Limit	104.25	104.25	−0.000	*
29	SBI: Lower Limit	94.32	94.32	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	97.89	97.89	0.000	*
33	SBI: Upper Limit	104.25	104.25	−0.000	*
34	SBI: Lower Limit	94.32	94.32	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	99.28	99.28	0.000	*
38	SBI: Upper Limit	104.25	104.25	−0.000	*
39	SBI: Lower Limit	94.32	94.32	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	99.28	99.28	0.000	*
43	TS PCI	99.28	99.28	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	97.01	97.01	−0.000	*
47	SBI: Upper Limit	106.90	106.90	−0.000	*
48	SBI: Lower Limit	96.72	96.72	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	96.73	96.73	−0.000	*
52	SBI: Upper Limit	106.90	106.90	−0.000	*
53	SBI: Lower Limit	96.72	96.72	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	105.87	105.87	0.000	*
57	Sub−Index Up Lim	106.90	106.90	−0.000	*
58	Sub−Index Low Lim	96.72	96.72	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	*
62	Sub−Index Up Lim	0.00	NONE	0.000	*
63	Sub−Index Low Lim	0.00	NONE	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	105.63	105.63	0.000	*
67	SBI: Upper Limit	106.90	106.90	−0.000	*
68	SBI: Lower Limit	96.72	96.72	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	101.61	101.61	−0.000	*
77	Special PCI	101.61	101.61	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	97.28	97.28	−0.000	*
81	Interexchange PCI	97.30	97.30	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: RTCR

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	$176			
5	DEM	($216)			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$0			
10	ITC	$10			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	($95)			
15	TOTAL OF INDIVIDUALS	($125)			
16	TOTAL EXOGENOUS	($125)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00743	0.00740	0.00002	*
18	Orig Prem CCL Rate	0.00737	0.00740	-0.00003	*
19	g	0.05263			
20	Proposed PCI	99.38	99.38	-0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	95.98	95.98	0.000	*
23	SBI: Upper Limit	96.8825	96.8825	-0.000	*
24	SBI: Lower Limit	87.06	87.06	-0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	90.19	90.19	-0.000	*
28	SBI: Upper Limit	98.62	98.62	-0.000	*
29	SBI: Lower Limit	80.18	80.18	-0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	91.65	91.65	-0.000	*
33	SBI: Upper Limit	96.61	96.61	-0.000	*
34	SBI: Lower Limit	87.41	87.41	-0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	0.00	NONE	0.000	*
38	SBI: Upper Limit	0.00	NONE	0.000	*
39	SBI: Lower Limit	0.00	NONE	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	88.74	88.74	-0.000	*
43	TS PCI	88.77	88.77	-0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	112.69	112.69	-0.000	*
47	SBI: Upper Limit	115.07	115.07	-0.006	*
48	SBI: Lower Limit	104.11	104.11	-0.006	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.63	102.63	-0.000	*
52	SBI: Upper Limit	110.28	110.28	-0.006	*
53	SBI: Lower Limit	99.78	99.78	-0.005	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub-Index	99.59	99.59	0.000	*
57	Sub-Index Up Lim	107.01	107.02	-0.006	*
58	Sub-Index Low Lim	96.82	96.83	-0.005	*
59	LEC Sub-Ind Out?				*
60	FCC Sub-Ind Out?				*
	DS3				
61	Prop Sub-Index	116.21	116.21	-0.001	*
62	Sub-Index Up Lim	124.87	124.87	-0.007	*
63	Sub-Index Low Lim	112.97	112.98	-0.006	*
64	LEC Sub-Ind Out?				*
65	FCC Sub-Ind Out?				*
	Total HiCap				
66	Proposed SBI	100.96	100.96	-0.000	*
67	SBI: Upper Limit	108.48	108.48	-0.006	*
68	SBI: Lower Limit	98.15	98.15	-0.005	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	105.03	105.03	-0.003	*
77	Special PCI	107.60	107.61	-0.006	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: RTCS

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($106)			
5	DEM	$220			
6	LTS/TRS	$0			
7	ISW	$0			
8	RDA	$0			
9	EDT	$0			
10	ITC	$0			
11	REMOVAL SHARING/LOW END ADJ	$12			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($373)			
16	TOTAL EXOGENOUS	($246)			
	COMMON LINE	($246)			
17	Term Prem CCL Rate	0.01625	0.01624	0.00001	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.06765			
20	Proposed PCI	77.15	77.15	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	114.20	114.19	0.001	*
23	SBI: Upper Limit	118.5973	118.5977	−0.000	*
24	SBI: Lower Limit	107.30	107.30	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	101.07	101.07	−0.000	*
28	SBI: Upper Limit	111.48	111.48	−0.000	*
29	SBI: Lower Limit	100.66	100.66	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	111.54	111.54	−0.000	*
33	SBI: Upper Limit	116.86	116.86	−0.000	*
34	SBI: Lower Limit	105.73	105.73	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	105.67	105.67	−0.000	*
38	SBI: Upper Limit	110.73	110.73	−0.000	*
39	SBI: Lower Limit	100.19	100.19	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	111.67	111.67	0.000	*
43	TS PCI	111.68	111.68	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	99.29	99.29	0.000	*
47	SBI: Upper Limit	99.89	99.89	0.000	*
48	SBI: Lower Limit	90.36	90.36	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	99.86	99.86	0.000	*
52	SBI: Upper Limit	103.36	103.36	0.000	*
53	SBI: Lower Limit	93.51	93.51	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	92.84	92.84	0.000	*
57	Sub−Index Up Lim	102.53	102.53	0.000	*
58	Sub−Index Low Lim	92.76	92.76	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	103.36	103.36	−0.000	*
62	Sub−Index Up Lim	103.51	103.51	0.000	*
63	Sub−Index Low Lim	93.65	93.65	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	94.32	94.31	0.000	*
67	SBI: Upper Limit	103.03	103.03	0.000	*
68	SBI: Lower Limit	93.22	93.22	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	95.90	95.90	0.000	*
77	Special PCI	95.91	95.91	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: VITC

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES in thousands				
4	SPF	($156)			
5	DEM	$79			
6	LTS/TRS	($260)			
7	ISW	($127)			
8	RDA	$0			
9	EDT	$0			
10	ITC	$0			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	($252)			
13	SHARING/LOW END ADJ	($252)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	($956)			
16	TOTAL EXOGENOUS	($700)			
	COMMON LINE				
17	Term Prem CCL Rate	0.01634	0.01634	0.00000	•
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	•
19	g	0.06955			
20	Proposed PCI	82.84	82.84	−0.000	•
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	100.00	100.00	−0.000	•
23	SBI: Upper Limit	103.7903	103.7903	−0.000	•
24	SBI: Lower Limit	93.91	93.91	−0.000	•
25	LEC SBI Out Bounds?				•
26	FCC SBI Out Bounds?				•
	Local Transport				
27	Proposed SBI	92.70	92.70	0.000	•
28	SBI: Upper Limit	102.43	102.43	−0.000	•
29	SBI: Lower Limit	92.68	92.68	0.000	•
30	LEC SBI Out Bounds?				•
31	FCC SBI Out Bounds?				•
	Information				
32	Proposed SBI	97.71	97.71	−0.000	•
33	SBI: Upper Limit	105.03	105.03	0.000	•
34	SBI: Lower Limit	95.03	95.03	−0.000	•
35	LEC SBI Out Bounds?				•
36	FCC SBI Out Bounds?				•
	800 Data Base				
37	Proposed SBI	0.00	NONE	0.000	•
38	SBI: Upper Limit	0.00	NONE	0.000	•
39	SBI: Lower Limit	0.00	NONE	0.000	•
40	LEC SBI Out Bounds?				•
41	FCC SBI Out Bounds?				•
	Total Traffic Sensitive				
42	TS AFI	98.63	98.63	−0.000	•
43	TS PCI	98.63	98.63	0.000	•
44	LEC AFI Above PCI?				•
45	FCC AFI Above PCI?				•

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	98.05	98.05	−0.000	•
47	SBI: Upper Limit	101.46	101.46	−0.000	•
48	SBI: Lower Limit	91.80	91.80	0.000	•
49	LEC SBI Out Bounds?				•
50	FCC SBI Out Bounds?				•
	Audio & Video				
51	Proposed SBI	0.00	NONE	0.000	•
52	SBI: Upper Limit	0.00	NONE	0.000	•
53	SBI: Lower Limit	0.00	NONE	0.000	•
54	LEC SBI Out Bounds?				•
55	FCC SBI Out Bounds?				•
	HiCap				
	DS1				
56	Prop Sub−Index	97.96	97.96	0.000	•
57	Sub−Index Up Lim	101.50	101.50	0.000	•
58	Sub−Index Low Lim	91.84	91.84	−0.000	•
59	LEC Sub−Ind Out?				•
60	FCC Sub−Ind Out?				•
	DS3				
61	Prop Sub−Index	0.00	NONE	0.000	•
62	Sub−Index Up Lim	0.00	NONE	0.000	•
63	Sub−Index Low Lim	0.00	NONE	0.000	•
64	LEC Sub−Ind Out?				•
65	FCC Sub−Ind Out?				•
	Total HiCap				
66	Proposed SBI	100.92	100.92	0.000	•
67	SBI: Upper Limit	104.30	104.30	−0.000	•
68	SBI: Lower Limit	94.36	94.36	−0.000	•
69	LEC SBI Out?				•
70	FCC SBI Out?				•
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	•
72	SBI: Upper Limit	0.00	NONE	0.000	•
73	SBI: Lower Limit	0.00	NONE	0.000	•
74	LEC SBI Out Bounds?				•
75	FCC SBI Out Bounds?				•
	Total Special Access				
76	Special AFI	97.14	97.14	0.000	•
77	Special PCI	97.14	97.14	−0.000	•
78	LEC AFI Above PCI?				•
79	FCC AFI Above PCI?				•
	INTEREXCHANGE				
80	Interexchange AFI	0.00	NONE	0.000	•
81	Interexchange PCI	0.00	NONE	0.000	•
82	LEC AFI Above PCI?				•
83	FCC AFI Above PCI?				•

Filing Entity: SNCT

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.03018			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0000			
	EXOGENOUS CHANGES (000's)				
4	SPF	($2,584)			
5	DEM	($699)			
6	LTS/TRS	($3,611)			
7	ISW	$0			
8	RDA	$0			
9	EDT	($134)			
10	ITC	$178			
11	REMOVAL SHARING/LOW END ADJ	($11,472)			
12	REVISION SHARING/LOW END ADJ	$3,207			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$3,350			
15	TOTAL OF INDIVIDUALS	($11,765)			
16	TOTAL EXOGENOUS	($11,765)			
	COMMON LINE				
17	Term Prem CCL Rate	0.00506	0.00506	−0.00000	*
18	Orig Prem CCL Rate	0.00506	0.00506	−0.00000	*
19	g	0.03930			
20	Proposed PCI	78.47	78.47	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	102.85	102.85	−0.000	*
23	SBI: Upper Limit	108.0895	108.0895	−0.000	*
24	SBI: Lower Limit	97.78	97.78	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	95.68	95.68	−0.000	*
28	SBI: Upper Limit	98.19	98.19	0.000	*
29	SBI: Lower Limit	88.83	88.83	0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	96.01	96.01	−0.000	*
33	SBI: Upper Limit	99.89	99.89	−0.000	*
34	SBI: Lower Limit	90.38	90.38	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	100.00	100.00	0.000	*
38	SBI: Upper Limit	102.62	102.62	−0.000	*
39	SBI: Lower Limit	92.85	92.85	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	99.69	99.69	0.000	*
43	TS PCI	99.77	99.77	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	111.59	111.59	0.000	*
47	SBI: Upper Limit	115.04	115.04	0.000	*
48	SBI: Lower Limit	104.08	104.08	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.79	102.79	0.000	*
52	SBI: Upper Limit	105.97	105.97	0.000	*
53	SBI: Lower Limit	95.87	95.87	0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HICap				
	DS1				
56	Prop Sub−Index	100.85	100.85	0.000	*
57	Sub−Index Up Lim	107.23	107.23	0.000	*
58	Sub−Index Low Lim	97.02	97.02	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	98.13	98.13	0.000	*
62	Sub−Index Up Lim	103.90	103.90	0.000	*
63	Sub−Index Low Lim	94.01	94.01	0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HICap				
66	Proposed SBI	101.37	101.37	0.000	*
67	SBI: Upper Limit	107.16	107.16	0.000	*
68	SBI: Lower Limit	96.95	96.95	0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	104.17	104.17	0.000	*
77	Special PCI	104.28	104.28	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone Company of Florida

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($5,362)			
5	DEM	($1,368)			
6	LTS/TRS	$3,318			
7	ISW	$0			
8	RDA	$0			
9	EDT	$379			
10	ITC	$213			
11	REMOVAL SHARING/LOW END ADJ	$3,440			
12	REVISION SHARING/LOW END ADJ	$1,073			
13	SHARING/LOW END ADJ	$0			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$1,694			
16	TOTAL EXOGENOUS	$1,694			
	COMMON LINE				
17	Term Prem CCL Rate	0.01703	0.01703	0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.04937			
20	Proposed PCI	98.08	98.08	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	93.55	93.55	0.000	*
23	SBI: Upper Limit	98.2148	98.2148	−0.000	*
24	SBI: Lower Limit	88.86	88.86	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	78.41	78.41	0.000	*
28	SBI: Upper Limit	82.40	82.40	−0.000	*
29	SBI: Lower Limit	74.56	74.56	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	89.89	89.89	0.000	*
33	SBI: Upper Limit	93.11	93.11	−0.000	*
34	SBI: Lower Limit	84.24	84.24	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	85.24	85.24	0.000	*
38	SBI: Upper Limit	88.65	88.65	−0.000	*
39	SBI: Lower Limit	80.21	80.21	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	86.69	86.69	0.000	*
43	TS PCI	86.69	86.69	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	102.58	102.58	−0.000	*
47	SBI: Upper Limit	104.72	104.72	−0.000	*
48	SBI: Lower Limit	94.75	94.75	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	98.42	98.42	−0.000	*
52	SBI: Upper Limit	103.41	103.41	−0.000	*
53	SBI: Lower Limit	93.56	93.56	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	92.31	92.31	0.000	*
57	Sub−Index Up Lim	101.98	101.98	−0.000	*
58	Sub−Index Low Lim	92.27	92.27	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	96.05	96.05	−0.000	*
62	Sub−Index Up Lim	108.15	108.15	−0.000	*
63	Sub−Index Low Lim	96.04	96.04	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	95.30	95.30	0.000	*
67	SBI: Upper Limit	102.43	102.43	−0.000	*
68	SBI: Lower Limit	92.67	92.67	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	98.33	98.33	−0.000	*
77	Special PCI	98.38	98.38	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone Company of Indiana, Inc.

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	($214)			
5	DEM	($140)			
6	LTS/TRS	$1,060			
7	ISW	$0			
8	RDA	$0			
9	EDT	$114			
10	ITC	$54			
11	REMOVAL SHARING/LOW END ADJ	$902			
12	REVISION SHARING/LOW END ADJ	$211			
13	SHARING/LOW END ADJ	($1,014)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$1,003			
16	TOTAL EXOGENOUS	$1,003			
	COMMON LINE				
17	Term Prem CCL Rate	0.02025	0.02025	0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.06891			
20	Proposed PCI	97.95	97.95	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	96.44	96.44	−0.000	*
23	SBI: Upper Limit	101.2515	101.2515	0.000	*
24	SBI: Lower Limit	91.61	91.61	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	97.91	97.91	0.000	*
28	SBI: Upper Limit	92.31	92.31	−0.000	*
29	SBI: Lower Limit	83.52	83.52	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	92.71	92.71	0.000	*
33	SBI: Upper Limit	97.77	97.77	−0.000	*
34	SBI: Lower Limit	88.46	88.46	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	92.51	92.51	0.000	*
38	SBI: Upper Limit	98.17	98.17	0.000	*
39	SBI: Lower Limit	87.01	87.01	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	93.17	93.17	−0.000	*
43	TS PCI	93.17	93.17	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	103.21	103.21	0.000	*
47	SBI: Upper Limit	103.59	103.59	−0.000	*
48	SBI: Lower Limit	93.73	93.73	0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	96.39	96.39	0.000	*
52	SBI: Upper Limit	101.15	101.15	−0.000	*
53	SBI: Lower Limit	91.52	91.52	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	99.75	99.75	−0.000	*
57	Sub−Index Up Lim	110.07	110.07	−0.000	*
58	Sub−Index Low Lim	99.59	99.59	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	96.51	96.51	−0.000	*
62	Sub−Index Up Lim	105.35	105.35	−0.000	*
63	Sub−Index Low Lim	95.32	95.32	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	100.34	100.34	−0.000	*
67	SBI: Upper Limit	110.33	110.33	0.000	*
68	SBI: Lower Limit	99.83	99.83	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	101.32	101.32	−0.000	*
77	Special PCI	101.47	101.47	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$78			
5	DEM	($297)			
6	LTS/TRS	$1,364			
7	ISW	$0			
8	RDA	$0			
9	EDT	$90			
10	ITC	$508			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	$1,120			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$2,863			
16	TOTAL EXOGENOUS	$2,863			
	COMMON LINE				
17	Term Prem CCL Rate	0.01355	0.01355	0.00000	•
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	•
19	g	0.03886			
20	Proposed PCI	98.28	98.28	−0.000	•
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	107.64	107.64	−0.000	•
23	SBI: Upper Limit	112.7375	112.7375	−0.000	•
24	SBI: Lower Limit	102.00	102.00	0.000	•
25	LEC SBI Out Bounds?				•
26	FCC SBI Out Bounds?				•
	Local Transport				
27	Proposed SBI	92.21	92.21	−0.000	•
28	SBI: Upper Limit	97.12	97.12	−0.000	•
29	SBI: Lower Limit	87.87	87.87	−0.000	•
30	LEC SBI Out Bounds?				•
31	FCC SBI Out Bounds?				•
	Information				
32	Proposed SBI	100.23	100.23	−0.000	•
33	SBI: Upper Limit	103.82	103.82	−0.000	•
34	SBI: Lower Limit	93.93	93.93	−0.000	•
35	LEC SBI Out Bounds?				•
36	FCC SBI Out Bounds?				•
	800 Data Base				
37	Proposed SBI	95.93	95.93	0.000	•
38	SBI: Upper Limit	101.16	101.16	0.000	•
39	SBI: Lower Limit	91.53	91.53	−0.000	•
40	LEC SBI Out Bounds?				•
41	FCC SBI Out Bounds?				•
	Total Traffic Sensitive				
42	TS API	99.42	99.42	−0.000	•
43	TS PCI	99.42	99.42	−0.000	•
44	LEC API Above PCI?				•
45	FCC API Above PCI?				•

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	95.74	95.74	0.000	•
47	SBI: Upper Limit	100.37	100.37	−0.000	•
48	SBI: Lower Limit	90.81	90.81	−0.000	•
49	LEC SBI Out Bounds?				•
50	FCC SBI Out Bounds?				•
	Audio & Video				
51	Proposed SBI	102.07	102.07	−0.000	•
52	SBI: Upper Limit	107.09	107.09	−0.000	•
53	SBI: Lower Limit	96.89	96.89	−0.000	•
54	LEC SBI Out Bounds?				•
55	FCC SBI Out Bounds?				•
	HiCap				
	DS1				
56	Prop Sub−Index	107.49	107.49	−0.000	•
57	Sub−Index Up Lim	113.03	113.03	0.000	•
58	Sub−Index Low Lim	102.27	102.27	0.000	•
59	LEC Sub−Ind Out?				•
60	FCC Sub−Ind Out?				•
	DS3				
61	Prop Sub−Index	106.14	106.14	−0.000	•
62	Sub−Index Up Lim	106.54	106.54	−0.000	•
63	Sub−Index Low Lim	98.40	98.40	−0.000	•
64	LEC Sub−Ind Out?				•
65	FCC Sub−Ind Out?				•
	Total HiCap				
66	Proposed SBI	107.28	107.28	−0.000	•
67	SBI: Upper Limit	112.78	112.78	−0.000	•
68	SBI: Lower Limit	102.04	102.04	0.000	•
69	LEC SBI Out?				•
70	FCC SBI Out?				•
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	•
72	SBI: Upper Limit	0.00	NONE	0.000	•
73	SBI: Lower Limit	0.00	NONE	0.000	•
74	LEC SBI Out Bounds?				•
75	FCC SBI Out Bounds?				•
	Total Special Access				
76	Special API	102.86	102.86	−0.000	•
77	Special PCI	102.90	102.90	−0.000	•
78	LEC API Above PCI?				•
79	FCC API Above PCI?				•
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	•
81	Interexchange PCI	0.00	NONE	0.000	•
82	LEC API Above PCI?				•
83	FCC API Above PCI?				•

Filing Entity: United Telephone Company of Ohio

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$277			
5	DEM	($155)			
6	LTS/TRS	$753			
7	ISW	$0			
8	RDA	$0			
9	EDT	$535			
10	ITC	$289			
11	REMOVAL SHARING/LOW END ADJ	$711			
12	REVISION SHARING/LOW END ADJ	$321			
13	SHARING/LOW END ADJ	($1,402)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$1,329			
16	TOTAL EXOGENOUS	$1,329			
	COMMON LINE				
17	Term Prem CCL Rate	0.01909	0.01909	−0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.03812			
20	Proposed PCI	97.87	97.87	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	104.49	104.49	−0.000	*
23	SBI: Upper Limit	109.7123	109.7123	−0.000	*
24	SBI: Lower Limit	99.26	99.26	−0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	93.18	93.18	−0.000	*
28	SBI: Upper Limit	97.82	97.82	−0.000	*
29	SBI: Lower Limit	88.50	88.50	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	96.87	96.87	0.000	*
33	SBI: Upper Limit	102.50	102.50	−0.000	*
34	SBI: Lower Limit	92.74	92.74	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	96.32	96.32	0.000	*
38	SBI: Upper Limit	100.90	100.90	0.000	*
39	SBI: Lower Limit	91.29	91.29	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.54	98.54	−0.000	*
43	TS PCI	98.54	98.54	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	99.38	99.38	−0.000	*
47	SBI: Upper Limit	99.46	99.46	−0.000	*
48	SBI: Lower Limit	89.99	89.99	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	96.24	96.24	−0.000	*
52	SBI: Upper Limit	100.97	100.97	0.000	*
53	SBI: Lower Limit	91.35	91.35	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	104.18	104.18	0.000	*
57	Sub−Index Up Lim	112.16	112.16	−0.000	*
58	Sub−Index Low Lim	101.48	101.48	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	98.11	98.11	−0.000	*
62	Sub−Index Up Lim	105.16	105.16	−0.000	*
63	Sub−Index Low Lim	95.14	95.14	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	104.09	104.09	0.000	*
67	SBI: Upper Limit	111.77	111.77	−0.000	*
68	SBI: Lower Limit	101.12	101.12	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	101.40	101.40	0.000	*
77	Special PCI	101.40	101.40	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone – Eastern (NJ & Pa)

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($292)			
5	DEM	($225)			
6	LTS/TRS	$731			
7	ISW	$0			
8	RDA	$0			
9	EDT	$146			
10	ITC	$246			
11	REMOVAL SHARING/LOW END ADJ	$0			
12	REVISION SHARING/LOW END ADJ	$0			
13	SHARING/LOW END ADJ	($56)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$547			
16	TOTAL EXOGENOUS	$547			
	COMMON LINE				
17	Term Prem CCL Rate	0.00962	0.00962	0.00000	*
18	Orig Prem CCL Rate	0.00962	0.00962	0.00000	*
19	g	0.04946			
20	Proposed PCI	90.80	90.80	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	99.96	99.96	0.000	*
23	SBI: Upper Limit	104.9608	104.9608	0.000	*
24	SBI: Lower Limit	94.96	94.96	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	85.51	85.51	−0.000	*
28	SBI: Upper Limit	89.84	89.84	−0.000	*
29	SBI: Lower Limit	81.28	81.28	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	95.65	95.65	−0.000	*
33	SBI: Upper Limit	99.52	99.52	−0.000	*
34	SBI: Lower Limit	90.04	90.04	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	94.43	94.43	0.000	*
38	SBI: Upper Limit	97.16	97.16	−0.000	*
39	SBI: Lower Limit	87.90	87.90	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	94.77	94.77	−0.000	*
43	TS PCI	94.77	94.77	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	104.06	104.06	0.000	*
47	SBI: Upper Limit	104.06	104.06	0.000	*
48	SBI: Lower Limit	94.15	94.15	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.34	102.34	−0.000	*
52	SBI: Upper Limit	103.23	103.23	0.000	*
53	SBI: Lower Limit	93.39	93.39	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	104.22	104.22	−0.000	*
57	Sub−Index Up Lim	112.91	112.91	−0.000	*
58	Sub−Index Low Lim	102.16	102.16	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	95.79	95.79	−0.000	*
62	Sub−Index Up Lim	104.26	104.26	−0.000	*
63	Sub−Index Low Lim	94.35	94.35	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	103.15	103.15	−0.000	*
67	SBI: Upper Limit	111.94	111.94	−0.000	*
68	SBI: Lower Limit	101.28	101.28	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	102.56	102.56	−0.000	*
77	Special PCI	102.56	102.56	0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone Company of the Northwest (Or & Wa)

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($381)			
5	DEM	($101)			
6	LTS/TRS	$911			
7	ISW	$0			
8	RDA	$0			
9	EDT	$60			
10	ITC	$74			
11	REMOVAL SHARING/LOW END ADJ	$1,951			
12	REVISION SHARING/LOW END ADJ	$130			
13	SHARING/LOW END ADJ	($1,774)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$870			
16	TOTAL EXOGENOUS	$870			
	COMMON LINE				
17	Term Prem CCL Rate	0.02424	0.02424	−0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	−0.00114			
20	Proposed PCI	94.51	94.51	−0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	86.41	86.41	−0.000	*
23	SBI: Upper Limit	86.4076	86.4076	0.000	*
24	SBI: Lower Limit	78.18	78.18	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	79.17	79.17	0.000	*
28	SBI: Upper Limit	86.42	86.42	0.000	*
29	SBI: Lower Limit	78.19	78.19	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	84.23	84.23	0.000	*
33	SBI: Upper Limit	86.30	86.30	−0.000	*
34	SBI: Lower Limit	78.08	78.08	0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	81.11	81.11	0.000	*
38	SBI: Upper Limit	84.23	84.23	−0.000	*
39	SBI: Lower Limit	76.21	76.21	−0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	82.50	82.50	−0.000	*
43	TS PCI	82.50	82.50	−0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	92.91	92.91	−0.000	*
47	SBI: Upper Limit	96.95	96.95	−0.000	*
48	SBI: Lower Limit	87.71	87.71	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	90.92	90.92	0.000	*
52	SBI: Upper Limit	95.55	95.55	−0.000	*
53	SBI: Lower Limit	86.45	86.45	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	79.91	79.91	−0.000	*
57	Sub−Index Up Lim	87.85	87.85	−0.000	*
58	Sub−Index Low Lim	79.48	79.48	−0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	96.03	96.03	−0.000	*
62	Sub−Index Up Lim	105.10	105.10	−0.000	*
63	Sub−Index Low Lim	95.09	95.09	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	84.56	84.56	−0.000	*
67	SBI: Upper Limit	91.30	91.30	−0.000	*
68	SBI: Lower Limit	82.60	82.60	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	89.05	89.05	−0.000	*
77	Special PCI	92.50	92.50	−0.000	*
78	LEC API Above PCI?				LOW
79	FCC API Above PCI?				LOW
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone – Midwest (Ks,Mn,Mo,Ne,Wy & Tx)

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.04300			
3	X for IX	0.0400			
	EXOGENOUS CHANGES (000's)				
4	SPF	($554)			
5	DEM	($1,518)			
6	LTS/TRS	$6,410			
7	ISW	($45)			
8	RDA	$0			
9	EDT	$185			
10	ITC	$294			
11	REMOVAL SHARING/LOW END ADJ	$3,333			
12	REVISION SHARING/LOW END ADJ	($111)			
13	SHARING/LOW END ADJ	($3,253)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$4,744			
16	TOTAL EXOGENOUS	$4,745			
	COMMON LINE				
17	Term Prem CCL Rate	0.03372	0.03372	−0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.02644			
20	Proposed PCI	103.80	103.80	0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	97.66	97.66	−0.000	*
23	SBI: Upper Limit	102.4845	102.4845	0.000	*
24	SBI: Lower Limit	92.72	92.72	0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	82.63	82.63	−0.000	*
28	SBI: Upper Limit	87.01	87.01	−0.000	*
29	SBI: Lower Limit	78.72	78.72	−0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	93.76	93.76	−0.000	*
33	SBI: Upper Limit	95.00	95.00	−0.000	*
34	SBI: Lower Limit	85.95	85.95	−0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	95.29	95.29	0.000	*
38	SBI: Upper Limit	95.29	95.29	−0.000	*
39	SBI: Lower Limit	86.21	86.21	0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	91.72	91.72	−0.000	*
43	TS PCI	91.72	91.72	0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	94.46	94.46	−0.000	*
47	SBI: Upper Limit	98.58	98.58	−0.000	*
48	SBI: Lower Limit	89.19	89.19	−0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	99.02	99.02	−0.000	*
52	SBI: Upper Limit	103.97	103.97	0.000	*
53	SBI: Lower Limit	94.07	94.07	−0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub−Index	107.64	107.64	0.000	*
57	Sub−Index Up Lim	114.21	114.21	−0.000	*
58	Sub−Index Low Lim	103.34	103.34	0.000	*
59	LEC Sub−Ind Out?				*
60	FCC Sub−Ind Out?				*
	DS3				
61	Prop Sub−Index	95.01	95.01	0.000	*
62	Sub−Index Up Lim	104.45	104.45	−0.000	*
63	Sub−Index Low Lim	94.50	94.50	−0.000	*
64	LEC Sub−Ind Out?				*
65	FCC Sub−Ind Out?				*
	Total HiCap				
66	Proposed SBI	107.80	107.80	−0.000	*
67	SBI: Upper Limit	113.81	113.81	−0.000	*
68	SBI: Lower Limit	102.97	102.97	−0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	98.84	98.84	−0.000	*
77	Special PCI	98.84	98.84	−0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	0.00	NONE	0.000	*
81	Interexchange PCI	0.00	NONE	0.000	*
82	LEC API Above PCI?				*
83	FCC API Above PCI?				*

Filing Entity: United Telephone – Southeast Inc. (Tn, Va & SC)

1993 Tariff Review Plan

#		LEC	FCC	Delta	Flag
	GENERAL				
1	GNPPI	0.02934			
2	X for CL, TS and SP	0.03300			
3	X for IX	0.0300			
	EXOGENOUS CHANGES (000's)				
4	SPF	$76			
5	DEM	($123)			
6	LTS/TRS	$552			
7	ISW	$0			
8	RDA	$0			
9	EDT	$104			
10	ITC	$358			
11	REMOVAL SHARING/LOW END ADJ	$1,096			
12	REVISION SHARING/LOW END ADJ	$56			
13	SHARING/LOW END ADJ	($320)			
14	OTHER	$0			
15	TOTAL OF INDIVIDUALS	$1,199			
16	TOTAL EXOGENOUS	$1,199			
	COMMON LINE				
17	Term Prem CCL Rate	0.01183	0.01183	0.00000	*
18	Orig Prem CCL Rate	0.01000	0.01000	0.00000	*
19	g	0.07157			
20	Proposed PCI	96.55	96.55	–0.000	*
	TRAFFIC SENSITIVE				
21	Local Switching				
22	Proposed SBI	107.38	107.38	–0.000	*
23	SBI: Upper Limit	112.7596	112.7596	–0.000	*
24	SBI: Lower Limit	102.02	102.02	–0.000	*
25	LEC SBI Out Bounds?				*
26	FCC SBI Out Bounds?				*
	Local Transport				
27	Proposed SBI	89.31	89.31	–0.000	*
28	SBI: Upper Limit	93.78	93.78	–0.000	*
29	SBI: Lower Limit	84.85	84.85	–0.000	*
30	LEC SBI Out Bounds?				*
31	FCC SBI Out Bounds?				*
	Information				
32	Proposed SBI	100.58	100.58	0.000	*
33	SBI: Upper Limit	105.32	105.32	–0.000	*
34	SBI: Lower Limit	95.29	95.29	–0.000	*
35	LEC SBI Out Bounds?				*
36	FCC SBI Out Bounds?				*
	800 Data Base				
37	Proposed SBI	95.60	95.60	0.000	*
38	SBI: Upper Limit	100.70	100.70	0.000	*
39	SBI: Lower Limit	91.11	91.11	–0.000	*
40	LEC SBI Out Bounds?				*
41	FCC SBI Out Bounds?				*
	Total Traffic Sensitive				
42	TS API	98.15	98.15	–0.000	*
43	TS PCI	98.15	98.15	–0.000	*
44	LEC API Above PCI?				*
45	FCC API Above PCI?				*

#		LEC	FCC	Delta	Flag
	SPECIAL				
	VG, MT, TG				
46	Proposed SBI	95.69	95.69	–0.000	*
47	SBI: Upper Limit	100.65	100.65	0.000	*
48	SBI: Lower Limit	91.06	91.06	–0.000	*
49	LEC SBI Out Bounds?				*
50	FCC SBI Out Bounds?				*
	Audio & Video				
51	Proposed SBI	102.90	102.90	–0.000	*
52	SBI: Upper Limit	108.18	108.18	–0.000	*
53	SBI: Lower Limit	97.88	97.88	–0.000	*
54	LEC SBI Out Bounds?				*
55	FCC SBI Out Bounds?				*
	HiCap				
	DS1				
56	Prop Sub–Index	107.32	107.32	–0.000	*
57	Sub–Index Up Lim	112.61	112.61	–0.000	*
58	Sub–Index Low Lim	101.88	101.88	–0.000	*
59	LEC Sub–Ind Out?				*
60	FCC Sub–Ind Out?				*
	DS3				
61	Prop Sub–Index	99.97	99.97	–0.000	*
62	Sub–Index Up Lim	108.15	108.15	–0.000	*
63	Sub–Index Low Lim	98.04	98.04	–0.000	*
64	LEC Sub–Ind Out?				*
65	FCC Sub–Ind Out?				*
	Total HiCap				
66	Proposed SBI	107.72	107.72	–0.000	*
67	SBI: Upper Limit	112.91	112.91	–0.000	*
68	SBI: Lower Limit	102.16	102.16	–0.000	*
69	LEC SBI Out?				*
70	FCC SBI Out?				*
	Wideband				
71	Proposed SBI	0.00	NONE	0.000	*
72	SBI: Upper Limit	0.00	NONE	0.000	*
73	SBI: Lower Limit	0.00	NONE	0.000	*
74	LEC SBI Out Bounds?				*
75	FCC SBI Out Bounds?				*
	Total Special Access				
76	Special API	101.03	101.03	–0.000	*
77	Special PCI	101.03	101.03	–0.000	*
78	LEC API Above PCI?				*
79	FCC API Above PCI?				*
	INTEREXCHANGE				
80	Interexchange API	78.70	78.70	0.000	*
81	Interexchange PCI	100.10	100.10	0.000	*
82	LEC API Above PCI?				LOW
83	FCC API Above PCI?				LOW

*U.S. Government Printing Office: 1993 — 342-145/80023